

Agenda Item No. 10a

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1262

TO: Mayor and City Council

SUBJECT: Approval of Thunder Hockey Office Lease

INITIATED BY: Park and Recreation Department

AGENDA: Consent

Recommendation: Approve the Lease Agreement.

Background: In 1995, the City of Wichita entered into an agreement with Canlan Ice Sports for the management of the Wichita Ice Sports Center, located at Maple and Sycamore in downtown Wichita. Pursuant to the management agreement, Canlan has leased approximately 2,200 sq. ft. of space in the Ice Center to the Thunder Hockey Team to serve as the team's corporate front office. The original lease with the Thunder expired in 2002 and the lease has been extended on a month-to-month basis. A new one-year lease has been negotiated between Canlan and the Thunder. Under the terms of the management agreement with Canlan, the City must approve the terms of the new lease.

Analysis: Under the original lease, the Thunder leased the office space, plus a team locker room, for \$10.00 per square foot. The Thunder subsequently relinquished its lease on the locker room. The terms of the new lease call for the team to lease office space only at a rate equal to approximately \$11.80 per square foot. Included in the lease rate is 12 hours of free use of one of the two ice rinks for team practices, training camp or exhibition games. Access to dressing rooms during the use of the ice rink is also included.

Financial Considerations: The revenues generated by the operation of the Wichita Ice Sports Center, including Thunder office lease income, belong to the City of Wichita and are used to defray the operating expenses of the facility.

Legal Considerations: The lease agreement has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Office Lease Agreement between the Ice Sports Center and Thunder Hockey and authorize the Mayor to sign.

04-1262

WICHITA ICE SPORTS AND WICHITA THUNDER

OFFICE LEASE

This Office Lease ("Lease") is entered as of the ____ day of _____ 2004, by and between the Ice Sports Center of Wichita, L.L.C. ("Ice Sports Center") on behalf of the City of Wichita, Kansas ("Landlord") and Wichita Hockey, Inc., doing business as the Wichita Thunder ("Thunder"). The parties agree as follows:

1. Recitals.

(a) Ice Sports Center is manager on behalf of Landlord of a project commonly referred to as the Wichita Ice Sports Center, located at 505 W. Maple, Wichita, Kansas, 67213 (the "Project").

(b) Thunder desires to lease space for offices at the Project and Landlord is willing to lease that space, pursuant to the terms of this Lease.

2. Lease. Landlord hereby leases to Thunder and Thunder hereby leases from Landlord the portion of the premises ("Premises") outlined on Exhibit "A" and attached hereto, consisting of approximately 2,189 square feet, more or less, which amount is stipulated to be accurate and not subject to re-measurement.

3. Term. This Lease shall commence on the ____ day of _____ 2004, and shall continue thereafter for twelve (12) months. In the event that the Thunder are successful within this 24-month period to obtain a new coliseum to play, including office space, the parties agree to terminate this lease at that time with no penalty. In the event this Lease commences on a day other than the first day of the month, this Lease shall additionally extend to the end of the last calendar month. Rent for any partial month shall be prorated on the basis of a thirty- (30) day month.

4. Acceptance of Premises. Thunder acknowledges that it currently leases the Premises and that it accepts the Premises in its present condition and further acknowledges that the Premises is in condition acceptable for the purposes for which Thunder will use the Premises.

5. Rent. Thunder shall pay to Landlord for the first year of the term of this Lease monthly rent in advance in the amount of One Thousand Eight Hundred Fifty Dollars (\$1,850) per month and for the second year of the term of this lease, monthly rent in advance in the amount of One Thousand Eight Hundred Dollars Fifty Dollars (\$1,850) per month. All rent shall be paid to Landlord at the address to which notices to Landlord are given or at such alternate address as Landlord shall specify by notice to Thunder.

6. Taxes. Landlord, shall pay any taxes levied against its personal property on the Premises, and real estate taxes on the Premises and improvements, and Thunder shall pay any taxes levied against its personal property, and each party hereto shall take the necessary steps to cause the taxes on such property to be levied against the proper owner of the property subject to such tax.

7. Use of Premises. Thunder shall use the Premises for Thunder's offices and related purposes and for no other use without Landlord's consent. Thunder shall not do, bring or

keep anything in, on or about the Premises that will cause a cancellation or avoidance of any insurance covering the building in which the Premises are located. If the rate of any insurance carried by Landlord is increased as a result of Thunder's particular use of the property, and such rate increase is attributable to such use, and not to Thunder's occupancy alone, Thunder shall pay to Landlord within ten (10) days before the date Landlord is obligated to pay a premium on the insurance, or within ten (10) days after the Landlord delivers to Thunder a certified statement from Landlord's insurance carrier stating that the rate increase was caused by an activity of Thunder on the Premises as permitted in this Lease, whichever date is later, a sum equal to the difference between the original premium and the increased premium.

Thunder shall comply with all laws concerning the Premises or Thunder's use of the Premises, including, without limitation, the obligation at Thunder's cost to maintain or restore the Premises in compliance with conformity with all laws relating to the condition, use or occupancy of the Premises during the Term. Except that Thunder shall not be obligated to comply with any law that requires alterations, maintenance, or restoration to the Premises unless the alterations, maintenance, or restoration are required as a result of Thunder's particular and specific use of the Premises at the time. Landlord shall make any alterations, maintenance, or restoration to the Premises required by such laws that Thunder is not obligated to make.

In the event any alterations, maintenance, or restoration are required to be performed by Landlord which are anticipated to cost more than One Thousand Dollars (\$1,000) which would not be required but for the tenancy of Thunder, Landlord may give notice of termination of this Lease, which notice shall state a termination date as of the end of a calendar month at least sixty (60) days after the notice and the nature and anticipated cost of the alterations, maintenance, or restoration involved. Thunder may, within ten (10) days after that notice, give notice to Landlord that it will pay any cost of the alterations, maintenance, or restoration over One Thousand Dollars (\$1,000), in which case this Lease shall continue. If Thunder fails to give that notice, this Lease shall terminate on the date stated in Landlord's original notice.

Thunder shall not use the Premises in any manner that will constitute waste, nuisance, or unreasonable annoyance (including, without limitation, the use of loudspeakers, or sound or light apparatus that can be heard or seen outside the Premises).

Thunder shall not use the Premises for sleeping, washing clothes, cooking or the preparation thereof, or mixing of anything that might emit any odor or objectionable noises or lights into the building in which the Premises are located.

Thunder shall not do anything on the Premises that will cause damage by willful or negligent conduct. The Premises shall not be overloaded. No machinery, apparatus, or other appliance shall be used or operated in or on the Premises that will in any manner injure, vibrate, or shake the Premises.

8a) Maintenance Responsibilities: Except as otherwise provided herein, Landlord shall, at its cost, maintain in good condition the building and parking areas on the Premises and at the Project.

8b) Janitorial Responsibilities: Ice Sports Wichita has agreed to provide janitorial services which would include picking up the garbage three days per week and vacuuming the floors once per week. This will be confirmed by both staff members on the best days to complete these tasks.

Thunder, at its cost, shall maintain in good condition all of Thunder's personal property, the phone system and all fixtures supplied by Thunder. Thunder shall be liable for any damage to the Premises resulting from the acts or omissions of Thunder, its authorized representatives, guests and invitees.

Thunder shall cause all trash, garbage, and waste from Thunder's use of the Premises to be removed regularly in accordance with usual practice. Thunder shall perform or arrange for its own janitorial services and keep the Premises neat and clean.

9. Alterations. Thunder shall not make any alterations to the Premises without Landlord's consent, which consent shall not be unreasonably withheld. Any alterations made shall remain on and be surrendered with the Premises on expiration or termination of the Lease, except that Landlord can elect within thirty (30) days before expiration of the Lease, or within five (5) days after termination of the Lease, to require Thunder to remove any alterations Thunder has made to the Premises. If Landlord so elects Thunder, at its cost, shall restore the Premises to the condition designated by Landlord in its election before the expiration or termination of the Term, or within thirty (30) days after notice of election is given, whichever is later, but only if the damage results from the removal of alterations which were allowed by consent that was conditioned upon their possible future removal.

If Thunder makes any alterations to the Premises as provided in this paragraph, the alterations shall not be commenced until two (2) days after Landlord has received notice from Thunder stating the date the installation of the alterations is to commence so that Landlord can post and record an appropriate notice of non-responsibility.

Thunder shall pay all costs for construction done by it or caused to be done by it on the Premises as permitted by this Lease. Thunder shall keep the building, other improvements, and land of which the Premises are a part, free and clear of all mechanics' liens resulting from construction done by or for Thunder.

Thunder shall have the right to contest the correctness or the validity of any such lien if, immediately on demand by Landlord, Thunder procures and records a lien release bond issued by a corporation authorized to issue surety bonds in Kansas in an amount satisfactory to remove such lien.

10. Utilities. Landlord shall furnish all heat and air conditioning to the Premises on all business days during the appropriate seasons during normal business hours. Landlord may adjust normal business hours from time to time. Landlord shall furnish all electricity required by Thunder in the normal conduct of business activities on the Premises; however, Thunder shall obtain the prior approval of Landlord before using any electrical items, which may pose unusual or extraordinary demands on the system and shall pay the additional cost of use of any such items. Landlord shall furnish all hot and cold water for lavatory purposes without charge. If an additional supply of water is required by Thunder, Thunder shall install a water meter to register such additional consumption of water, and Thunder shall pay all costs for installation of the meter and for additional water consumed, including any sewer or other charges based thereon.

11. Risk of Loss and Hold Harmless. Thunder shall indemnify and hold harmless Landlord against and from:

(a) Any and all claims arising from any breach or default in the performance of any obligation on Thunder's part to be performed under the terms of this Lease, or arising

from any act or negligence of the Thunder, or any officer, agent, employee, licensee or invitee of Thunder; and

(b) All costs, attorney's fees, expenses and liabilities incurred in connection with any such claim or any action or proceeding brought thereon.

Landlord shall indemnify and hold harmless Thunder against and from:

(a) Any and all claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease, or arising from any act or negligence of the Landlord, or any officer, agent, employee, licensee or invitee of Landlord; and

(b) All costs, attorney's fees, expenses and liabilities incurred in connection with any such claim or any action or proceeding brought thereon.

Thunder, as a material part of the consideration to Landlord, hereby assumes all risk of damage not covered by insurance specified in Section 12 hereof to property owned, leased, or controlled by Thunder.

Landlord or its agents shall not be liable to Thunder or to Thunder's officers, employees, agents, licensees or invitees, nor for any loss or damage to any property or any injury to or damage to persons resulting from any part of the Building or the land upon which the Building is located or related improvements or appurtenances thereto becoming out of repair, any defect in or failure of pipes or wiring, the backing up of any drains or the bursting or leaking of any pipes, faucets and plumbing fixtures, any gas, water, steam, electricity, or of rain leaking, escaping or flowing into the Premises from any part of the Building, or from the pipes, appliances or plumbing works therein or from the roof, street, or subsurface or from any other place resulting from dampness or any other cause whatsoever, theft, fire, explosion, act of God, riot, war, insurrection, court order or order of governmental authority or any other matter beyond the control of the Landlord.

Landlord or its agents shall not be liable for interference with the light or other incorporeal hereditaments, loss of business by Thunder, nor shall Landlord be liable for any latent defect in the Premises or in the Building.

Thunder shall give prompt written notice to Landlord in case of fire or accidents on the Premises or in the Building or of defect therein or in the fixtures or equipment located therein,

12. Liabilities and Insurance. Thunder, at its cost, shall maintain public liability and property damage insurance with liability limits of not less than the greater of Five Hundred Thousand Dollars (\$500,000) per person, Two Million Dollars (\$2,000,000) per occurrence, or the amount established under the Kansas Tort Claims Act or any successor act for municipality liability ensuring against all liability of Thunder or Landlord and their authorized representatives arising out of or in connection with the Premises or Thunder's use or occupancy of the Premises. Landlord shall be named as a co-insured under any such policies.

Landlord shall maintain property damage insurance with respect to the Project. All such insurance shall contain a waiver of subrogation clause in favor of Thunder.

Thunder shall maintain such property damage insurance with respect to its personal property, improvements, and alterations in, on, or about the Premises. All such insurance shall contain a waiver of subrogation clause in favor of Landlord.

13. Destruction of Premises. If, during the Term, the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, Landlord shall restore the Premises to substantially the same condition as it was in immediately before destruction, if the restoration can be made under the existing laws and can be completed within ninety (90) working days after the date of the destruction. Such destruction shall not terminate this Lease, but Thunder shall be entitled to a reduction of rent based directly on the amount of time, if any, the Premises are inaccessible or unusable and the percentage of inaccessibility or unuseability, unless such destruction resulted from the willful misconduct or negligence of Thunder, its agents or employees, in which case no reduction shall be allowed. The reduction in rent shall consider the nature and extent of interference to Thunder's ability to conduct business on the Premises and the need for access and essential services. The reduction in rent shall continue from the date the damage occurred until ten (10) business days after Landlord completes the repairs and restoration to the Premises or the part rendered unusable and notice provided to Thunder that the repairs and restoration are completed, or until Thunder again uses the Premises or the part rendered unusable, whichever is first. If Landlord, in its sole discretion, determines that the restoration cannot be made in the time stated in this Section, within fifteen (15) days after said destruction Landlord shall so notify Thunder, and Thunder can terminate this Lease immediately by giving notice to Landlord. If Thunder fails to terminate this Lease and if restoration is permitted under the existing laws, Landlord, at its election, can either terminate this Lease or restore the Premises or the building and other improvements in which the Premises are located within a reasonable time and this Lease shall continue in full force and effect. If the existing laws do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

14. Condemnation. For purposes of this Section, "condemnation" means (a) the exercise of any governmental power, whether by legal proceedings or otherwise, by a condemner and (b) a voluntary sale or transfer by Landlord to any condemner, either under threat of condemnation or while legal proceedings for condemnation are pending. "Date of taking" means the date the condemner has the right to possession of the property being condemned. "Award" means all compensation, sums, or anything of value awarded, paid, or received on a total or partial condemnation. "Condemner" means any public or quasi-public authority, or private corporation or individual having the power of condemnation.

If the Premises are totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

If any portion of the Premises is taken by condemnation, this Lease shall remain in effect, except that Thunder can elect to terminate this Lease if the remaining portion of the Premises is rendered unsuitable for Thunder's continued use of the Premises.

If the parking areas or access to the Premises is taken by condemnation, this Lease shall remain in full force and effect, except that if such a substantial portion of the parking areas or access is taken by condemnation so that Thunder is unable to carry on its business, Thunder shall have the right to terminate this Lease, subject to the foregoing provisions of this Section.

If a party elects to terminate this Lease for other than a total taking, it must terminate pursuant to this Section by giving notice to the other party within thirty (30) days after

the nature and the extent of the taking have been finally determined. The party terminating this Lease also shall notify the other party of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after the terminating party has notified the other party of its election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination designated in the notice from the terminating party. If notice of termination is not given within the thirty-(30) day period, it shall continue in full force and effect.

If any portion of the Premises is taken by condemnation and this Lease remains in full force and effect, on the date of taking the monthly rent shall be reduced by an amount that is in the same amount of monthly rent as the total number of square feet in the Premises taken bears to the total number of square feet in the Premises immediately before the date of taking.

15. Assignments. Thunder shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except Thunder's authorized representatives) to occupy or use all or any part of the Premises without first obtaining Landlord's consent, which shall not be arbitrarily or unreasonably withheld. Any assignment, encumbrance, or sublease without Landlord's consent shall be voidable and, at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this Section. No interest of Thunder in this Lease shall be assignable by operation of law.

Each of the following acts shall be considered an involuntary assignment:

- (a) If Thunder is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which Thunder is in bankruptcy; or, if Thunder is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;
- (b) If a writ of attachment or execution is levied on this Lease;
- (c) If, in any proceeding or action to which Thunder is a party, a receiver is appointed with authority to take possession of the Premises.

An involuntary assignment shall constitute a default by Thunder and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Thunder. If a writ of attachment or execution is levied on this Lease, Thunder shall have ten (10) days in which to cause the attachment or execution to be removed.

16. Default. The occurrence of any of the following shall constitute a default by Thunder:

- (a) Failure to pay rent within one (1) day after Thunder receives notice from Landlord of Thunder's failure to pay rent. However, Thunder shall be in default upon failure to pay rent by the due date at any time during the calendar year in which Thunder has already received two (2) notices of its failure to pay rent by the due date, or
- (b) Failure to perform any other provision of this Lease if the failure to perform is not cured within ten (10) days after notice has been given to Thunder. If the default cannot reasonably be cured within ten (10) days, Thunder shall not be in default of this Lease if Thunder commences to cure the default within the ten- (10) day period and diligently and in good faith continues to cure the default.

Notices given under this Section shall specify the general nature of this default. No such notice shall be deemed forfeiture or a termination of this Lease unless Landlord so elects in the notice.

Landlord shall have the following remedies if Thunder commits a default. These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by law:

Landlord may continue this Lease in full force and effect, and the Lease shall continue in effect as long as Landlord does not terminate Thunder's right to possession and Landlord shall have the right to collect rent when due. During the period Thunder is in default, Landlord may enter the Premises and relet them or any part of them to third parties for Thunder's account. Thunder shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Reletting may be for a period shorter or longer than the remaining Term of this Lease. Thunder shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord received from any reletting. No act by Landlord allowed by this Section shall terminate this Lease unless Landlord notifies Thunder that Landlord elects to terminate this Lease. After Thunder's default and for as long as Landlord does not terminate Thunder's right to possession of the Premises, if Thunder obtains Landlord's consent Thunder shall have the right to assign or sublet its interest in this Lease, but Thunder shall not be released from liability. Landlord's consent to a proposed assignment or subletting shall not be unreasonably withheld.

Landlord may terminate Thunder's right to possession of the Premises at any time Thunder is in default. No act by Landlord, other than giving notice to Thunder, shall terminate this Lease insofar as Landlord's right to terminate is concerned. Acts of maintenance, efforts to relet the Premises or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Thunder's right to possession.

At any time Thunder has previously been notified of a default, as provided under this Section, and such default has not been cured within the time specified in this Section, Landlord may cure the default at Thunder's cost. If Landlord at any time, by reason of Thunder's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Thunder to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by Landlord until Landlord is reimbursed by Thunder. The sum, together with interest on it, shall be additional rent.

Rent not paid within five (5) days of the date when due shall bear interest at the rate of ten percent (10%) per annum, beginning on the date due until paid.

17. Signage. Thunder, at its cost, shall have the right to place, construct and maintain an exterior sign on the Premises identifying the Premises as Thunder's business. Any such sign shall be subject, however, to the approval of the Landlord.

18. Landlord's Entry Rights. Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes:

(a) To determine whether the Premises are in good condition and whether Thunder is complying with its obligation under this Lease;

(b) To do any necessary maintenance and to make any restoration to the Premises or the building and other improvements in which the Premises are located that Landlord has the right or obligation to perform;

(c) To serve, post, or keep posted any notices required or allowed under provisions of this Lease;

(d) To post "for sale" signs at any time during the Term, to post "for rent" or "for lease" signs during the last three (3) months of the Term, or during any period while Thunder is in default, provided all such signs shall be designed and placed in a manner so as not to create confusion as to any involvement of Thunder or imply that the Thunder is for sale;

(e) To show the Premises to prospective brokers, agents, buyers, tenants, or persons interested in an exchange at any time during the Term; and

(f) To do any other act or thing necessary for the safety or preservation of the Premises if any excavation or other construction is undertaken or is about to be undertaken on any adjacent property or nearby street. Landlord's right under this provision extends to the owner of the adjacent property on which excavation or construction is to take place and the adjacent property owner's authorized representative.

Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of Landlord's entry on the Premises.

Landlord shall conduct its activities on the Premises as allowed in this Section in a reasonable manner to minimize inconvenience, annoyance, or disturbance to Thunder.

19. Notices. Any notice desired or necessary hereunder shall be given in writing and either hand-delivered, facsimile transmitted, telexed or mailed with proper postage prepaid, certified, return receipt requested. If hand- delivered, facsimile transmitted or telexed, any such notice shall be effective upon delivery. If mailed, such notice shall be effective on the second business day following mailing. Notices to parties hereto shall be to the address stated below or such successor address as may be specified by notice hereunder. The addresses are as follows:

IF TO Landlord

Ice Sports Center of Wichita, L.L.C.
505 W. Maple
Wichita, KS 67213
Facsimile: (316) 337-9155
Attention: General Manager

IF TO Thunder

Wichita Hockey, Inc.
505 W. Maple
Wichita, KS 67213
Facsimile: (316) 264-3037
Attention: General Manager

20. Waiver. No delay or omission in the exercise of any right or remedy of Landlord on any default by Thunder shall impair such a right or remedy or be construed as a waiver by Landlord.

The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default. It shall constitute only a waiver of timely payment for the particular rent payment involved.

No act or conduct of Landlord, including, without limitation, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Thunder before the expiration of the Term. Only a notice from Landlord to Thunder to that effect shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease.

Landlord's consent to approval of any act by Thunder requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Thunder.

Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

21. Sale of Premises. If Landlord sells or transfers any portion of the building, other improvements and land of which the Premises are a part Landlord, on consummation of the sale or transfer, shall be released of all liability thereafter accruing under this Lease and this Lease shall automatically be assigned thereby to Landlord's successor without recourse, if Landlord's successor has assumed in writing for the benefit of Thunder Landlord's obligations under this Lease. If any security deposit or prepaid rent has been paid by Thunder to Landlord, Landlord shall transfer the security deposit or prepaid rent to Landlord's successor and on such transfer Landlord shall be discharged from any further liability with reference to the security deposit or prepaid rent.

22. Subordination. Landlord reserves the right to subject and subordinate this Lease at all times to the lien of any mortgage, deed of trust, or other security instrument hereafter placed upon the Landlord's interest in the Premises, and upon the Building of which the Premises are a part, or upon any building hereafter placed upon the land of which the Premises form a part. Thunder shall execute and deliver, upon demand by Landlord, such further instrument subordinating this Lease to the lien of any such mortgage, deed of trust or other security instrument, provided such instrument shall recognize the validity and continuance of this Lease in the event of foreclosure of the Landlord's interest, or in the event of conveyance in lieu of foreclosure, so long as the Thunder shall not be in default under the terms hereof.

23. Disposition of Improvements and Alterations, On expiration, or thirty (30) days after termination of the Term, Thunder shall surrender to Landlord the Premises and all Thunder's improvements and alterations are in good condition, except for ordinary wear and tear and except for alterations that Thunder has the right to remove or is obligated to remove. Thunder shall remove all its personal property within the above stated time. Thunder shall perform all restoration made necessary for the removal of any alteration of Thunder's personal property within the time periods stated in this Section.

24. Holding Over. If Thunder, without Landlord's consent, fails to surrender the Premises to Landlord on expiration of the Term as required, Thunder shall hold Landlord harmless from all damages resulting from Thunder's failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant resulting from Thunder's failure to surrender the Premises. Rent during any such holding over period shall be One Hundred Fifty Percent (150%) of that of the immediately preceding period.

If Thunder, with Landlord's consent, remains in possession of the Premises after expiration of termination of the Term, or after the date in any notice given by Landlord to Thunder terminating this Lease, such possession by Thunder shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. During any such month-to-month tenancy, Thunder shall pay all rent required by this Lease for each month on a prorated basis. All provisions of this Lease, except those pertaining to Term, shall apply to the month-to-month tenancy.

25. Abandonment. Thunder shall not vacate or abandon the Premises at any time during the Term of the Lease, including any renewal, without the prior written consent of Landlord.

26. Quiet Possession. Landlord hereby covenants and warrants that it is the owner of the Premises and that Thunder, upon payment of rents herein provided for and performance of the Conditions, covenants, promises and agreements on its part to be performed, shall and may peaceably possess and enjoy the Premises during the Term of this Lease without any interruption or disturbance.

27. Attorney's Fees. The successful party in any litigation between Landlord and Thunder by reason of the interpretation or enforcement of the terms of this Lease shall be entitled to reasonable attorney's fees and all costs of suit incurred therein.

28. Manager Indemnity Liability. Thunder acknowledges that Ice Sports Center is acting solely in its capacity as manager of the Project on behalf of the City of Wichita, and that Ice Sports Center is a disclosed agent. Ice Sports Center is not entering into this Lease in its separate capacity. Any provisions of this Lease which operate to exculpate or limit liability of Landlord shall also serve to exculpate or limit any potential liability of Ice Sports Center. Any indemnity, hold harmless, or insurance to be provided by Thunder to protect or benefit Landlord shall also be provided by Thunder to protect or benefit Ice Sports Center.

29. Common Areas. Thunder shall have the non-exclusive right in common with other tenants to use common areas of the Project, including the right to ingress and egress from the Premises. Common Areas may be changed or altered from time to time by Landlord.

30. Rules and Regulations. Thunder shall comply with all rules and regulations as may from time to time be issued and amended by Landlord governing use and occupancy of the Project.

31. Use of Hazardous Material. Thunder shall only cause or permit any Hazardous Material (as hereafter defined) to be brought upon, kept, or used in or about the Premises by Thunder, its agents, employees, contractors, or invitees, as long as such Hazardous Material is necessary or useful to Thunder's business and will be used, kept, and stored, in a manner that complies with all laws, rules, regulations, decrees and orders regulating any such Hazardous Material so brought upon or used or kept in or about the Premises. If Thunder or any of its licensees or invitees breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises which is caused or permitted by Thunder or any of its licensees or invitees results in contamination of the Project, or if contamination of the Project by Hazardous Material otherwise occurs for which Thunder is legally liable to Landlord for damage resulting therefrom, Thunder shall indemnify, defend, and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, reduction in value of the Premises, damages for the loss or restriction on use of rentable

or usable space or of any amenity of the Project, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Lease terms as a result of such contamination. This indemnification of Landlord by Thunder includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises or Project. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises which is caused or permitted by Thunder or any of its licensees or invitees results in any contamination of the Premises, Thunder shall promptly take all actions, at its sole expense, as are necessary to return the Premises to the condition it was in prior to the introduction of any such Hazardous Material to the Premises; provided that Landlord's approval of such action shall first be obtained, which approval shall not be unreasonably withheld or delayed so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project. The foregoing indemnity shall survive the expiration or earlier termination of this Lease. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste, including, but not limited to those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Material Tables (49 CFR 172.101), or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302), and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable local, state, or federal law.

32. City of Wichita Approval. This Lease is subject to and shall be in no force or effect until it has been approved by the City of Wichita. This Lease and the rights of Lessee hereunder are subordinate to the provisions of the Project Development and Management Agreement entered into as of the 21st day of March, 1995, between the City of Wichita and P.C. Development Inc. as amended and assigned, pursuant to which Ice Sports Center acts as manager of the Project. Nothing in this Lease shall be deemed to alter Ice Sports Center's rights or obligations thereunder.

33. Ice Time. Thunder may use either rink at the Project for training camp, exhibition games or otherwise, subject to availability and other commitments, with the consent of Landlord, which consent shall not be unreasonably withheld. Thunder shall pay for that use at the rate of One Hundred Fifty Dollars (\$150.00) per hour or portion thereof for each use. During any such use, Thunder may sell team merchandise and souvenirs, and Landlord shall have no interest in those sales; however, Thunder shall sell no food or beverage items at the Project, and all such sales shall be the sole privilege and for the account of Landlord.

34. General

(a). This Lease shall be performable and enforceable in Sedgwick County, Kansas, and shall be construed in accordance with the laws of the State of Kansas.

(b) This Lease is made for the sole and exclusive benefit of the Landlord and Thunder, their successors and assigns, and is not made for the benefit of any third party,

(c) In the event of any ambiguity in any of the terms of this Lease, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

(d) All covenants, stipulations, and agreements in this Lease shall extend to and bind each party hereto, its legal representatives, successors, and assigns.

(e) This Lease shall not become effective until it has been fully and properly executed by both parties hereto.

(f) The titles of the several sections of this Lease are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

(g) The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

APPROVED:

ICE SPORTS CENTER OF WICHITA, L.L.C.

CITY OF WICHITA

Mayor

Carlos Mayans,

WICHITA HOCKEY, INC., d/b/a Wichita Thunder

APPROVED AS TO FORM:

Gary Rebenstorf, City Attorney and

Director of Law

ATTEST:

Karen Sublett, City Clerk

Agenda Item No. 12

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1263

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Firefly Drive and Azure Lane (south of 13th, west of 119th Street West) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the paving project on October 19, 2004.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of paving Firefly Drive and Azure Lane. The Staff Screening & Selection Committee selected Baughman for the design on November 18, 2004.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$32,500, and will be paid by special assessments and General Obligations Bonds.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

FIREFLY DRIVE AND AZURE LANE

THIS AGREEMENT, made this _____ day of _____, 2004, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

FIREFLY DRIVE AND AZURE LANE from the south line of 13th Street North, south to and including the cul-de-sac. (south of 13th, west of 119th Street West) (Project No. 472 84111).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for Firefly Drive and Azure Lane and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply

with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days

following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum payment plus partials made on the basis of the lump sum fee amount of \$32,500.00.

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer which shall include a project bar chart or other suitable progress chart indicating progress on the PROJECT and a record of the time period to complete the work, the time period elapsed, and the time period that remains to complete the work. Billings submitted during the progress of the work will be paid on the basis of satisfactory completion of major project tasks. The major tasks and accumulated partial payment amounts are listed below:

Accumulated partial payments shall not exceed \$16,250.00 (fifty percent of the maximum fee payment amount) until field check plans have been received and approved by the City Engineer for distribution to utility companies. Accumulated partial payments shall not exceed \$22,750.00 (seventy percent of the maximum fee payment amount) until office check plans have been received and approved by the City Engineer for distribution to utility companies. Accumulated partial payments shall not exceed \$26,000.00 (eighty percent of the maximum fee payment amount) until final utility plans allowing for utility relocations or adjustments for the PROJECT have been received and approved by the City Engineer for distribution to the utilities.

Accumulated partial payments for the PROJECT shall be based on milestones in Exhibit A and shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement

shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY

COUNCIL

Carlos Mayans, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

N. Brent Wooten, President

ATTEST:

EXHIBIT "A"
SCOPE OF SERVICES

FIREFLY DRIVE AND AZURE LANE

from the south line of 13th Street North, south
to and including the cul-de-sac.
(south of 13th, west of 119th Street West)
(472 84111)

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" Mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 1/2"), CD-ROM, or other media acceptable to the City Engineer. The files are

to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below and generally in accordance with the project bar chart attached to Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

(a) Completion of all work required by this agreement (including submittal of final approved plan tracings, field notes, and related PROJECT documents February 11, 2005).

Agenda Item No. 12

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1263

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for Firefly Drive and Azure Lane (south of 13th, west of 119th Street West) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the paving project on October 19, 2004.

Analysis: The proposed Agreement between the City and Baughman Company, P.A. provides for the design of paving Firefly Drive and Azure Lane. The Staff Screening & Selection Committee selected Baughman for the design on November 18, 2004.

Financial Considerations: Payment to Baughman will be on a lump sum basis of \$32,500, and will be paid by special assessments and General Obligations Bonds.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

FIREFLY DRIVE AND AZURE LANE

THIS AGREEMENT, made this _____ day of _____, 2004, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

FIREFLY DRIVE AND AZURE LANE from the south line of 13th Street North, south to and including the cul-de-sac. (south of 13th, west of 119th Street West) (Project No. 472 84111).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements for Firefly Drive and Azure Lane and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply

with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days

following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

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B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

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F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum payment plus partials made on the basis of the lump sum fee amount of \$32,500.00.

During the progress of work covered by this agreement, partial payments may be made to the ENGINEER at intervals of one calendar month. The progress billings shall be supported by documentation acceptable to the City Engineer which shall include a project bar chart or other suitable progress chart indicating progress on the PROJECT and a record of the time period to complete the work, the time period elapsed, and the time period that remains to complete the work. Billings submitted during the progress of the work will be paid on the basis of satisfactory completion of major project tasks. The major tasks and accumulated partial payment amounts are listed below:

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Accumulated partial payments for the PROJECT shall be based on milestones in Exhibit A and shall not exceed eighty-five percent (85%) of the total fees for services prior to satisfactory completion of all work required by this agreement

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement

shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY

COUNCIL

Carlos Mayans, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

N. Brent Wooten, President

ATTEST:

EXHIBIT "A"
SCOPE OF SERVICES

FIREFLY DRIVE AND AZURE LANE

from the south line of 13th Street North, south
to and including the cul-de-sac.
(south of 13th, west of 119th Street West)
(472 84111)

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" Mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 1/2"), CD-ROM, or other media acceptable to the City Engineer. The files are

to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.

5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.

6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.

8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Project Milestones. The ENGINEER agrees to complete and deliver the field notes, preliminary and final plans (including final tracings), specifications and estimates to the CITY within the time allotted for the PROJECT as stipulated below and generally in accordance with the project bar chart attached to Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond the control of the ENGINEER.

(a) Completion of all work required by this agreement (including submittal of final approved plan tracings, field notes, and related PROJECT documents February 11, 2005).

Agenda Item No. 13

CITY OF WICHITA
City Council Meeting
December 21, 2004

Agenda Report No. 04-1264

TO: Mayor and City Council Members

SUBJECT: Acquisition of a Tract behind 550 Wetmore Court for the Cowskin Creek Channel Improvement Project: Kellogg to Maple (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition

Background: The Cowskin Creek Channel Improvement Project will require the acquisition of all or part of fourteen tracts. One of the required acquisitions is an undeveloped tract behind 550 Wetmore Court. The total tract encompasses 9,148 square feet and is unimproved.

Analysis: The acquisition was appraised for \$3,000 and this amount was confirmed by the review appraiser. After negotiations, the owner has agreed to accept \$4,000.

Financial Considerations: The funding source is Storm Water Utility and Federal funding. A budget of \$4,500 is requested. This represents \$4,000 for acquisition and \$500 for closing costs, surveys, title insurance and other miscellaneous costs.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Contracts; and 3) Authorize all necessary signatures.

Agenda Item #14

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1265

TO: Mayor and City Council Members

SUBJECT: Budget Adjustments (2004 Year-end)

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Approve year-end closing budget adjustments.

Background: Final expenditures are being posted to the 2004 budgets. Various budget adjustments are needed to accomplish fiscal year-end closing. Adjustments exceeding \$10,000 require City Council approval in accordance with the City's Administrative Regulations.

Analysis: There are seven areas where year-end budget adjustments are requested to facilitate year-end closing and/or to efficiently use 2004 appropriations.

Wage agreements with the FOP and IAFF were approved by the City Council subsequent to approval of the 2004 budget. Those contracts included 2004 wage terms that were estimated to cost \$614,260 more than budgeted in the 2004 Police and Fire budgets (\$375,920 in Police and \$238,340 in Fire). The Police Department share can be completely absorbed through salary savings this year. The Fire Department may also be able to absorb some of this cost, though probably not all. Should it be necessary in order to bring closure to the 2004 Fire Department budget, it is proposed to authorize up to \$238,340 from appropriated reserves into the Fire Department personal services budget to offset the expense of the IAFF labor contract.

Due to the transition from using part-time/seasonal City employees to using contractual employees through Syndeo Staffing, a need exists for year-end budget adjustments. The cost for contractual employees is more than offset by savings in the personal services; however, a budget adjustment is required for the affected departments to move the budget authority from personal services to contractuels. It is requested to authorize adjustments not to exceed \$250,000 (combined) within departments' budgets for the purpose of offsetting contractual labor expenses in departments that would otherwise exceed the revised budget for contractuels.

The Wichita Art Museum experienced frequent employee turnover within 2004 that resulted in salary savings. One consequence, however, is that some expenses are shifted to contractuels due to reliance on temporary services to maintain minimum daily staffing, similar to the issue above. This, though, was further compounded at the Museum by other higher than anticipated operating costs (such as electricity). The Wichita Art Museum is requesting that \$80,000 in salary savings be reprogrammed to contractuels to offset these expenses. Because the Museum operates from its own Special Revenue Fund, any unexpended portion of their 2004 appropriation would roll to cash balance in the Art Museum Fund and would likely be re-appropriated in 2005 or 2006. Executing a budget adjustment now makes the funding available to the Museum this year.

The Police Helicopter is nearly two years old and regularly scheduled heavy maintenance (inspection and overhaul of the "hot section" of the engine) is due within several months (by no later than March 2005), based on projected flight hours. Based on a recent overall inspection, down time on the helicopter would be minimized if the maintenance (expected to cost up to \$35,000, depending on the inspection results) were shifted into

December 2004, rather than performed in the first quarter of 2005. Year-end salary savings in the Police budget are available for transfer into a project for this maintenance.

On April 20, 2004, the City Council approved a Fire Act grant application of \$444,543, and also approved the grant match of \$190,510 from the General Fund. This grant application, if awarded, will purchase needed rescue equipment for the Fire Department. At this point, it appears doubtful that any notification of award will occur prior to year end. The uncertainty of the grant award timing has impacted the Department's equipment replacement priorities in 2004: increasing the replacement of clothing and reducing rescue equipment purchases. To preserve the budgeted grant match funds until a grant award notification is received, a fire equipment project account and the transfer of the budgeted grant match funds into this account is proposed. In the event the department ultimately does not receive a 2004 grant award, the funds will be available to match future grants or supplement General Fund fire equipment expenditures. And, to accommodate the re-prioritized equipment expenditures in 2004, a transfer of \$20,900 from capital outlay to the equipment project is proposed.

Timing differences necessitate a budget transfer of \$96,500 from contingency funds in the Economic Development Fund to address the following items. The Chamber of Commerce contract provides for quarterly payments (of approximately \$62,500); however, timing anomalies resulted in five such payments occurring in 2004. Also, Kansas Technical Training Institute scholarships totaling up to \$200,000 were approved by the Council in 2003, of which \$34,000 have been expended from the 2004 budget.

Financial Considerations: With the exception of the Fire 2004 wage agreement issue (to be paid, if necessary from reserves), proposed budget adjustments will be made only within department's budgets, not altering the bottom line. Appropriated reserves are maintained (within legal levels and according to sound financial management). Funds are available to meet these needs without adverse consequence to resources needed for future programs/operations.

Legal Considerations: Compliance with State budget requirements have been met, since all budget adjustments are within funds, and the final 2004 expenditure totals (including the recommended adjustments) will not exceed the legally adopted 2004 expenditure authorizations.

Recommendations/Actions: It is recommended that the City Council approve year-end budget adjustments to facilitate fiscal year-end closing.

Agenda Item No. 15

Agenda Report No. 04-1266

TO: Mayor and City Council

SUBJECT: HOME Program; Housing Development Loan Program Funding
(Districts I, III, IV, V, VI)

INITIATED BY: Housing Services Department

AGENDA: Consent

Recommendation: Approve the funding allocations.

Background: During the 2004-2005 Consolidated Plan funding process, a total of \$305,583 in HOME funding was allocated for the Housing Development Loan Program (HDLP). The HDLP is designed to provide subsidies for infill housing projects and to support the development of real estate that is idle or underutilized, and to provide needed housing for underserved populations. Funding may be provided to non-profit or for-profit organizations. Loan structure is dependent upon the type of project to be financed. The program funding may be utilized within the boundaries of the City's Redevelopment Incentives Area.

The Housing Services Department is recommending funding for three applications:

Power CDC/Millair Creek: Power CDC has applied for \$200,000 in HDLP funding to continue construction of single-family homes in the Millair Creek subdivision, which is located at 25th and Minnesota, in the Northeast Local Investment Area. Power CDC has completed and sold 10 homes, and there are 5 additional homes under construction, with previous funding provided through the HDLP.

Shadowridge LC: Shadowridge, LC has applied for \$175,000 in HDLP funding to continue construction of single-family homes in the Shadowridge subdivision, which is located at the intersection of Sunnybrook and Sunnybrook Ct. in the Planeview Local Investment Area. A total of 14 homes have been completed and sold within the subdivision with previous funding provided through the HDLP.

Mennonite Housing Rehabilitation Services (MHRS): MHRS has applied for \$200,000 in HDLP funding in order to continue single-family housing development in the City's Local Investment Areas. MHRS has completed 6 homes in the 1900 block of North Ash with previous HDLP funding. MHRS has advised Housing Services staff that it has as many as 10 families who desire to purchase a home in one of the City's local investment areas, but the organization does not have sufficient funding to do so at this time.

Analysis: Each of the proposed projects will require HOME program subsidy. HOME funds are typically provided as development subsidy in order to offset site acquisition, construction, and site improvement expenses, as well as selling expenses and developer fees. The total of these costs cannot be entirely recovered from sale proceeds due to market constraints and the need to keep the homes affordable for low-income families. Typically, the development subsidy of homes constructed with HOME program development subsidy is between \$20,000 and \$25,000, depending on the cost of acquisition, and whether or not demolition is involved.

Families purchasing homes will receive a loan for down payment and closing costs through the City's HOMEownership 80 program. Typically, in the case of new construction, a family receives up to 20% of the purchase price in down payment assistance, and an additional \$2,000 for closing costs.

Housing Services staff has determined that all of the aforementioned applications meet the criteria of the HDLP, and that each project will assist the City in achieving its neighborhood revitalization and consolidated plan goals. Therefore, staff recommends funding of each application in the amount of \$101,861. The Housing Advisory Board approved the recommended allocations by a 6-0 vote (with one abstention) during its November 16, 2004 meeting.

Financial Considerations: HOME funding will be provided in the form of zero-interest, forgivable participation construction loans. Typically, the HOME program share of the construction loan is 25% of the appraised value of the home to be constructed. Allocated funding will provide for construction of up to a total of 12 to 15 homes under the proposed projects.

Legal Considerations: Funding provided under the Housing Development Loan program must ultimately be approved by the City Council. The funding agreement will be drafted by Housing Services staff and approved as to form by the City Law Department.

Recommendations/Actions: It is recommended that the City Council approve the recommended allocations, authorize staff to negotiate the funding agreements, and authorize the necessary signatures.

Agenda Item #16

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1267

TO: Mayor and City Council
SUBJECT: Purchase Option (Ryan Properties, L.L.C.) (District VI)
INITIATED BY: Finance Department
AGENDA: Consent

Recommendation: Ratify the bond call, adopt the Resolution, waive the notice period for reconveyance and approve the Special Warranty Deed, the Termination and Release of Lease Agreement, and Cancellation, Discharge and Release of Trust Indenture.

Background: On December 8, 1998 the Wichita City Council approved the issuance of \$2.7 million in Industrial Revenue Bonds, Series XVII, 1998, for the purpose of acquiring, constructing, and equipping a corporate headquarters facility in an existing facility located at 266 N. Main in downtown Wichita.

Under the provisions of Sections 16.2 and 16.3 of the Lease Agreement for the bond series, Ryan Properties, L.L.C., has the option, if all outstanding bonds have been paid, to purchase the facility from the City of Wichita for the sum of \$1000. The City of Wichita on December 3, 2004, received notice from the Ryan Properties, L.L.C. of a request to call outstanding bonds and of the company's intention to exercise its purchase option. In connection with the exercise of the purchase option, the company has asked that the City waive the 30-day notice period so that it can close on the purchase prior to the end of December.

Analysis: Under the terms of the Lease, the City is required to convey the real property securing the IRB issue to the Tenant, once the Tenant has paid the purchase price and other considerations as listed under the provisions of the Lease Agreement, including the payment of all outstanding bonds.

Financial Considerations: The purchase price is \$1000 and other considerations as listed under the provision of the Lease Agreement to redeem and retire all outstanding bonds. This price includes without limitations, principal, interest, redemption premium, and all other expenses of redemption, and trustee fees, but after the deduction of any amounts described and provided for in the Lease Agreement and available for such redemption.

Legal Considerations: The City is contractually bound to convey the IRB Project property to the Tenant by special warranty deed, once all the conditions established in the Lease have been met. The City Attorney's Office has approved the form of the attached Resolution to authorize the execution of the Special Warranty Deed and the Termination and Release of Lease Agreement (each in substantially the form attached to the Resolution).

Recommendations/Actions: It is recommended that City Council: 1) ratify the bond call; 2) adopt the Resolution; 3) waive the notice period for reconveyance; 4) approve the Special Warranty Deed, the Termination and Release of Lease Agreement, and the

Cancellation, Discharge and Release of Trust Indenture; and authorize necessary signatures.

Agenda Item No. 17
City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1268

TO: Mayor and City Council Members

SUBJECT: Parking Lots, Signage and Entry Drives (All Districts)

INITIATED BY: Department of Park and Recreation

AGENDA: Consent

Recommendation: Approve the bonding resolution and authorize initiation of the project.

Background: The Park and Recreation Department has a number of parking lots across the city which—by City Code—must be paved. In addition, entry drives to a number of Park and Recreation facilities and sites are in various stages of disrepair and in need of major reconstruction. Facilities and sites impacted include recreation centers, swimming pools, athletic fields, and parks. Furthermore, the Park and Recreation Department has utilized the same design for entrance signs for many decades and the current system has become outdated and unappealing. The City, which produced a new City logo several years ago, has become a strong symbol for our city and current signs do not have the City seal to promote the parks correlation with other important City amenities.

Analysis: The 2005 Park Capital Improvement Program (CIP) includes funding for entrance signage and the paving and reconstruction of parking lots and entry drives. The City has identified the need to develop new sign standards for the park system. Design Services will be required to establish a new graphic standard and identity for the park system. In addition, paving and reconstruction of these access nodes and points will protect the City's investment in Park and Recreation facilities and amenities and enhance their use by fee-paying users, neighborhood groups, and citizens. Parking areas requiring compliance include Harrison Park and Southlakes Fishing Lake. The park department will also upgrade the current Park Maintenance facility parking area to comply with current City Code requirements.

Financial Considerations: The 2005 Park CIP includes \$450,000 for the paving and reconstruction of parking lots and entry drives at Park and Recreation facilities and sites across the city. The funding source is general obligation bonds.

Legal Considerations: The Law Department has approved the bonding resolution as to form.

Recommendation/Action: It is recommended that the City Council 1) approve the bonding resolution; 2) authorize initiation of the project; 3) authorize the hiring of design consultants; and 4) authorize all necessary signatures.

Agenda Item #18

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1269

TO: Mayor and City Council Members

SUBJECT: Adjustments to Special Liquor Tax Fund Budgets

INITIATED BY: City Manager's Office

AGENDA: Consent

Recommendation: Approve adjustments to three Special Liquor Tax project budgets.

Background: The City Council, with recommendations from the Special Liquor Tax Coalition, approves annual allocations for Special Liquor Tax service providers. The provided services are designed to address local alcohol and substance abuse issues. At meetings on May 20, 2003, December 2, 2003 and March 16, 2004 the Council respectively approved allocations of \$55,527 for the Center of Health and Wellness, \$43,870 for the Mid-America All-Indian Center (IATS), and \$98,429 for COMCARE of Sedgwick County to provide services over periods that include all or part of 2004. However, because of end of calendar year encumbrance problems and the varying contract terms, these three project budgets need minor adjustments to allow City staff to pay the total amount allocated by the City Council for these programs.

Analysis: The 2004 budget for the Center of Health and Wellness needs to be increased by \$150 to allow staff to pay for services provided, which totals slightly less than the Council approved \$55,527. The budget for the Mid-America All Indian Center needs to be increased by \$2,230 to allow staff to pay up to the \$43,870 authorized by the Council. The budget for COMCARE of Sedgwick County needs to be increased by \$1,020 to allow staff to pay up to the \$98,429 authorized by the Council. The adjustments do not increase or alter the amounts approved by Council for these providers; rather the

adjustments will allow staff to expend fully the amounts as authorized previously by the Council.

Financial Considerations: Funds are available in the Special Liquor Tax fund to adjust these three project budgets. These adjustments will not obligate any general fund monies.

Legal Considerations: The budget increases are within the certified budget amount of this fund.

Recommendation/Action: Approve budget increases and the adjustments to three Special Liquor Tax project budgets.

Agenda Item #19

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1270

TO: Mayor and City Council

SUBJECT: Purchase of Three (3) Buses (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent Agenda

Recommendation: Approve the purchase.

Background: On February 10, 2004, the City Council passed the Capital Improvement Program for 2004 - 2013. In accordance with the City CIP, Wichita Transit will be replacing three (3) of its 1997 RT-52 small buses, since they have reached their useful life according to Federal Transit Administration capital replacement guidelines. These 1997 buses will be replaced with three similar heavy-duty buses built by Optima Bus Corporation, located in Wichita.

Analysis: In 2001, WT selected Optima Bus Corporation to purchase 30' low floor buses, with options to purchase additional buses for up to 5 years. WT will utilize its option to purchase three more Optima buses, which will be identical to the ones purchased in 2001. In addition, by ordering these buses now to meet a February 2005 delivery date, Optima will provide for each bus, a \$2000 parts credit and the REI Bus-Watch video surveillance system, a \$6,077 cost, free of charge. Total incentives equal \$24,231 for this purchase.

Financial Consideration: The three (3) Optima Bus Corporation buses will be purchased with grants from the FTA (80%) and KDOT (20%). Cost per bus will equal \$258,737. The total cost of three Optima buses, pre-production meeting, and bus line inspections will not exceed \$780,000. There are no city funds in the procurement.

Legal Consideration: The City's Law Department will review the contract prior to execution as to form.

Recommendation/Actions: It is recommended that the City Council approve the purchase of three Optima buses not to exceed \$780,000.

Agenda Item # 20

City of Wichita

City Council Meeting
December 21, 2004

Agenda Report No. 04-1271

TO: Mayor and Members of the City Council

SUBJECT: General Obligation Bond and Note Sale

INITIATED BY: Finance Department

AGENDA: Consent

Recommendation: Adopt resolutions.

Background: The City is planning to offer for sale one series of general obligation temporary notes totaling \$57,585,000 (Series 213), two series of general obligation bonds

(Series 780 and 780A) totaling \$19,825,000 for the purpose of providing permanent financing for capital improvement projects of the City and one series of general obligation bonds totaling \$4,140,000 for the purpose of providing permanent financing for Tax Increment Finance (TIF) related projects of the City. The public sale of the bonds and notes is scheduled for 10:30 a.m. on January 11, 2005, at which time sealed bids will be opened and the City Council will award the sale of bonds and notes to the bidders whose proposed interest rates result in the lowest overall cost to the City.

Analysis: The City's Winter 2005 general obligation bond and note sale includes the following issues:

Temporary Notes

The proceeds from the sale of the Series 213 Temporary Improvement and Renewal Notes will be used to provide interim financing for City-at-large and improvement district projects.

Special Assessment Bonds

The proceeds from the sale of the Series 780 and 780A Bonds will be used to permanently finance neighborhood improvements located in special improvement districts. Special assessments have been levied against the property owners in the improvement districts for the purpose of paying all or a portion of the costs of such improvements, including the payment of principal and interest on Series 780 and Series 780A Bonds. The Special Assessment Bonds, Series 780, will be issued in the par amount of \$19,035,000. The Special Assessment Bonds, Series 780A, will be issued in the par amount of \$790,000.

Tax Increment Finance (TIF) Bonds

The proceeds from the sale of the Series 958 Bonds, herein referred to as the "TIF Bonds" will be used for public improvements located within the Gilbert/Mosley Tax Increment Financing District. Kansas Statutes allow for cities to finance public development or redevelopment of blighted areas, conservation areas, or areas designated as enterprise zones with incremental real estate taxes. Tax increment funds collected within each defined area will be used to pay all or a portion of the costs of the projects located within the TIF district.

Financial Considerations: The City of Wichita awards the sale of bonds and notes to the bidder with the lowest true interest cost, or "TIC". Using TIC to calculate the bids, accounts for the time value of money. The TIC is the rate that will discount all future cash payments so that the sum of their present value will equal the bond proceeds. Further, using the TIC calculation can potentially result in the City saving money because TIC does not ignore the timing of interest payments.

The Series 213 Temporary Notes will mature on August 18, 2005 and will be retired using the proceeds of both permanent financing bonds, renewal notes and cash.

The Series 780 Special Assessment Bonds will mature serially over 15 years with principal maturities structured to produce level annual payments of principal and interest. The Series 780 Bonds are payable from the collection of special assessments levied against benefitting properties, and if not so paid, from citywide ad valorem taxes. The Series 780 Special Assessment bonds will be callable in 2012 with a 1% call premium.

The Series 780A Special Assessment Bonds will mature serially over 20 years with principal maturities structured to produce level annual payments of principal and interest. The Series 780A Bonds are payable from the collection of special assessments levied against benefitting properties, and if not so paid, from citywide ad valorem taxes. The Series 780A Special Assessment bonds will be callable in 2015 with a 1% call premium.

The Series 958 TIF Bonds will mature serially over 15 years with principal maturities structured to produce level annual payments of principal and interest. The Series 958 TIF Bonds are payable from the collection of property taxes to the Sedgwick County Treasurer and paid to the City Treasurer. The Series 958 TIF Bonds will be callable in 2012 with a 1% call premium.

Legal Considerations: The Law Department has approved the Resolutions authorizing the sale of the series of bonds and notes and will direct the publication and distribution of the Notices of Bond and Note Sale (prepared by the City's Bond Counsel as required by law).

Recommendation/Action: It is recommended the City Council adopt resolutions authorizing general obligation bond and note sales, approve the submittal of the Preliminary Official Statement upon completion, and authorize publication of the Notices of Sale.

Agenda Item No. 21

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1272

TO: Mayor and City Council

SUBJECT: Data Center Electrical/Mechanical Systems

INITIATED BY: Department of Information Technology

AGENDA: Consent

Recommendation: Approve the budget transfers and contract.

Background: The current computer room was designed in the 1970's and over the last thirty years has seen little change in the basic electrical and A/C systems that support it. The current electrical service is nearly out of expansion space and little is known at this point about the maximum capacities these facilities can provide. An expert determination of the overall facilities capacities is essential to ensure continuity of computing service over the long term.

Analysis: Newer rack-mountable servers are running hotter per rack unit than older and larger servers, reversing a long trend of smaller, faster and less power-intensive devices. Forty servers in a rack require up to 5 kW of power. It takes one ton of air (12,000 BTUs) to cool one rack. A thorough understanding of the capacities available in combination with expert advice in current trends and best practice implementations will be combined to create a long-range (10 years or more) physical facilities plan. A request for proposal was issued and 1 proposal received from Professional Engineering Consultants P.A. Meeting all proposal requirements within approved budget program option amounts.

Financial Considerations: The 2004 Revised Information Technology budget includes \$60,000 to audit the current electrical and mechanical systems, provide recommended repairs and upgrades, and implement the recommendations. Placing the budgeted funds into a project account will allow adequate time to evaluate the facility and implement recommended changes.

Legal Considerations: Transfers over \$10,000 require City Council approval.

Recommendations/Actions: It is recommended that the City Council approve the budget transfers and contract.

Agenda Item #

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1273

TO: Mayor and City Council

SUBJECT: EPA Grant Application for Pollution Prevention Activities

INITIATED BY: Department of Environmental Health
Department of Public Works
Purchasing Department

AGENDA: Consent

Recommendations: Approve the application.

Background: Environmental Health (EH) in cooperation with Public Works (PWs) and Purchasing would like to apply for an EPA grant. This opportunity provides financial assistance to local governments for development and implementation of pollution prevention (P2) policies and source reduction activities. EPA is interested in projects that will provide an overall benefit to the environment by preventing the generation of pollutants at the source. More specifically, EPA is soliciting applications that achieve P2 through environmentally preferable purchasing policies and practices and/or through the integration of P2 concepts into existing local programs. EPA is particularly interested in applicants who establish partnerships with environmental assistance providers.

EH proposes to work with Kansas State's Pollution Prevention Institute (PPI) as a subcontractor and other City departments to develop a citywide environmentally preferable purchasing program for City facilities. The program will then be implemented as a test case at the City's Central Maintenance Facility for vehicle fleet maintenance operations. This project will be established to document and track results of P2 activities and any benefits (source reduction, economic or process improvements) that might be achieved. The results will be published for possible implementation of similar programs into other City departments. The results will also be promoted at environmental conferences to encourage other local governments and businesses to take similar steps for P2.

Analysis: EH is seeking approval to apply for EPA's grant called "To Support Source Reduction Assistance" required by December 15, 2004. If awarded the grant, EH, as project manager, will work with PWs, Purchasing and Ks State's PPI to develop and implement a P2 program described above. PPI will be the primary subcontractor for this work and will provide technical expertise to the City for development and implementation of P2 programs. They will also assist in preparing grant and program

documents and assist in implementing, documenting and tracking the program at the Central Maintenance Facility. EH and PPI will work with Purchasing and PWs Fleet Maintenance to implement the programs.

Financial Considerations: The grant application will not exceed \$20,000 and will be implemented in a period not to exceed two years. EH intends to subcontract approximately 75% of the grant award to Ks State's PPI. The City of Wichita will provide labor to meet or exceed an EPA required 5% (\$1,000) grant match.

Legal Considerations: The Law Department has approved the application as to form.

Recommendation/Actions: It is recommended the City Council approve the grant application, authorize the necessary signatures and authorize expenditure of funds if awarded the grant.

Agenda Item 23.

CITY OF WICHITA
City Council Meeting
December 21, 2004

Agenda Report 04-1274

TO: Mayor and City Council Members

SUBJECT: Settlement of Litigation

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize approval of the interim settlement agreement.

Background: The Independent Living Resource Center filed a lawsuit earlier this year in state district court questioning the City's compliance with the requirements of the ADA and Rehabilitation Act. The City has recognized areas of non-compliance exist, and had independently started taking steps to remedy this situation. This settlement agreement adopts those positive steps into a more comprehensive resolution that will insure greater access across the entire spectrum of City facilities and programs.

Analysis: The City performed an ADA self assessment in 1992, but the requirements of the law have become increasingly more defined since that time. The City Council has previously given approval for staff to select an ADA consultant. The consultant selected will review all City facilities and programs to arrive at an economical yet comprehensive plan to increase access. The lawsuit filed by ILRC highlighted some acknowledged deficiencies, and questioned others. Staff has evaluated the potential scope of the lawsuit, the money and effort to be expended by both sides in litigation, and the considerable risk of a trial resolution that would not satisfy either side. Given the prior Council approval of greater access as a City goal, a negotiated resolution to that end appears appropriate. This settlement agreement will take the City down a path of substantial, but measured improvement in access. This will be accomplished on a timetable of priorities set with the help of the City's selected consultant, and substantial input from ILRC and others representing groups and organizations serving community members with disabilities. The net result should be a more community responsive transition plan, implemented at a substantial cost savings compared to court enforced modifications.

Financial Considerations: Funding for the programatic changes and facility improvements arising from this settlement will come from the present and future budget allotments of the affected departments. Funding for the self assessment and transition plan has been previously approved from the Public Works budget, and selection of that consultant is in the RFP process. Funding for the award of reasonable attorney fees to ILRC, to be determined at a later time by the court, will come from the tort claims fund.

Legal Considerations: The Law Department recommends acceptance of the interim settlement agreement. A final settlement agreement will entail implementation of the transition plan determined after the Council receives the input of the consultant, public comment, staff comment, and the advisory group herein created.

Recommendations/Actions: Authorize acceptance of the interim settlement agreement.

Agenda Item No. 24

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1275

TO: Mayor and City Council

SUBJECT: Murdock Bridge Water Line Replacement (District VI)

INITIATED BY: Water & Sewer Department

AGENDA: Consent

Recommendation: Approve the transfer of funds.

Background: The Murdock Bridge is undergoing rehabilitation. On November 1, 2004, there was a large main break in the 36" waterline to the east of the bridge. The 36" water line is currently out of service, pending repairs. The 36" water line is a major transmission main and serves the easterly part of the City of Wichita. The repair of the 36" water line and replacement of the two 24" water lines on the bridge are required to return the line to service.

Analysis: The waterline must be repaired immediately to provide adequate pressures and volumes for the existing water customers. Though work on the bridge is continuing, the work cannot be completed until the water lines are repaired and replaced. The transfer of funds is necessary to cover the cost of the water line repair and replacement.

Financial Considerations: The estimated cost is \$350,000. Funds are available in the 2004 Water Utility operating budget, in the contingency funds.

Legal Considerations: The City Council must approve the transfer of budgeted funds.

Recommendations/Actions: Approve the transfer of funds and authorize the expenditure.

Agenda Item #25

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1276

TO: Mayor and City Council

SUBJECT: Settlement of Litigation

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize payment of \$20,000 as a full settlement of all claims arising out of an injury arising from a police apprehension and arrest.

Analysis: After investigating the claim, evaluating the extent of the claimed damages and the expected costs and expenses of the litigation, and considering the risks of trial, the City determined that a resolution of this matter was appropriate. After some discussion, the City has been offered an opportunity to resolve the claim with a lump sum payment of \$20,000 as full settlement of all claims arising out of this occurrence. Settlement would include a full release of liability for the City and the individual Police Officers. Because of the risks associated with litigation, the Law Department recommends acceptance of the offer.

Legal Considerations: The Law Department recommends acceptance of the offer of settlement.

Agenda Item 25a

Agenda Report No. 04-1302

AGENDA: Consent

Recommendation: Approve the project.

Background: The abandoned BNSF easement runs northeast through the city from approximately Murdock and Piatt to 17th St. No. and the eastern city limit. This easement is no longer maintained by the railroad, and has become overgrown with tall weeds and volunteer trees. Areas closer to the core area have been the site of illegal dumping, and contain a large quantity of trash and bulky waste. The Environmental Health Department and Wichita Police Department receive numerous citizen complaints concerning conditions along the easement, and WPD has additional concerns related to illegal activities along the property.

Analysis: State law and City ordinance allow abatement of nuisances on private property, after legal notice to the responsible parties. Abatement costs are billed to the property owner, or placed as a special assessment against the property. Environmental Health staff have mailed certified notice to BNSF in addition to publishing and posting copies as required by law. Given the abandonment of the right of way, cleanup by BNSF is unlikely. Cleanup and mowing projects under Chapters 7 and 8 of the city code are normally carried out by Environmental Health's nuisance abatement contractors. Due to the need for specialized equipment, the magnitude of the project, and the current contractors reluctance to guarantee a firm cost for cleanup, staff recommends issuance of a Request for Proposals for the work in question.

Financial Considerations: The Council, through the annual budget process, allocates funds for lot cleanup and weed mowing. Due to lower activity levels in 2004, \$ 95,000 is available in lot cleanup and mowing accounts to initiate cleanup of the BNSF easement. Initial estimates from existing contractors indicated the possibility of costs totaling \$ 200,000 for cleanup and mowing of the entire easement. Staff anticipates possible savings through the RFP process, and the potential involvement of specialized contractors. Initial cleanup would be targeted at the areas most heavily impacted, should total funds available be insufficient for the entire project.

Legal Considerations: The Law Department has advised that there is no legal impediment to proceed with the project.

Recommendations/Actions: It is recommended that the City Council approve the project, transfer \$95,000 from the General Fund, \$20,000 from weed mowing and \$75,000 from lot cleanup, and authorize issuance of a Request for Proposal.

Agenda Item No. 26

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1277

TO: Mayor and City Council Members

SUBJECT: Amended Storm Water Rate Resolution (All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Adopt the Amended Equivalent Residential Unit (ERU) Rate Resolution.

Background: In August 2004, when the City Council considered the 2005 Operating Budget, Council approved an ERU fee increase of \$0.05 (from \$1.45 to \$1.50), which would allow the Utility to be self funding with no General Fund contribution. A Resolution amending Section 2 of Resolution No. R-00-453 pertaining to the ERU Rate for the year 2005 is attached.

Financial Considerations: This \$0.05 increase in the ERU fee should result in about \$175,000 increase in annual revenue to the Utility. With this and prior adjustments, the annual General Fund subsidy of \$514,000 is eliminated.

Legal Considerations: The amended Rate Resolution has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council adopt the Amended Resolution and authorize the necessary signatures.

Agenda Item No. 28

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1306 B

TO: Mayor and City Council

SUBJECT: Repair or Removal of Unsafe Structures
4237 East Menlo - District III

INITIATED BY: Office of Central Inspection

AGENDA: Unfinished Business

Recommendation: Take appropriate action per City Council Policy 33.

Background: This property was before the Board of Code Standards and Appeals (BCSA) for public hearing on February 3, 2003, May 5, 2003, August 4, 2003 and October 13, 2003. Matt Foley, representing the new not-for-profit owners of the property, appeared at all hearings, except for the BCSA hearing on October 13, 2003. At the October 13, 2003 BCSA hearing, the BCSA determined that no additional repair work appeared to have been completed, and recommended that the City Council proceed with condemnation and removal of the structure, giving the owner 10 days to start demolition and an additional 10 days to complete it.

The case was before the City Council for a hearing on December 16, 2003. Matt Foley, representing the organization which owns the property, was present, and the Council adopted a resolution allowing the owner 120 days to complete the exterior repairs to the property, and if not completed, requiring the owner to return to the Council with a progress report.

The case came back before the Council for review on April 20, 2004. Matt Foley was again present to represent the property. Council voted to adopt staff's recommendation to allow an additional 60 days to complete the required exterior repairs.

Analysis: On July 14, 2004 staff made an inspection of the property. There were no apparent changes from the conditions observed in late April 2004. On July 15, 2004, a letter was sent to Mr. Foley informing him that the time granted by Council had expired, and that in order to avoid demolition of the property, he would need to request another hearing before the Council. Staff spoke with Mr. Foley, by telephone, on two subsequent occasions. Mr. Foley indicated that he would contact Council Member Lambke, and that he would recommence work on the Menlo property when on-going work was completed to his main residence.

Any significant exterior renovation or repair of the structure appears to have ceased since late April 2004. The structure is currently secured, but there is construction material, a large dirt pile and some tall weeds on the premises.

Taxes: The 2003 taxes are delinquent and the 2004 taxes were due by December 20, 2004, for a total amount of \$244.33.

Legal Considerations: The property owner has been notified of the date and time of this hearing.

Recommendations/Actions: It is recommended that the City Council modify its previous resolution and grant the property owner a final 60 days to complete required exterior repairs. Any extension of time should be conditioned on the following; (1) all delinquent taxes shall be paid in full as of 12/14/04; (2) the structure shall be maintained in a secure condition; (3) the premise shall be maintained free of debris and kept mowed; and (4) per City Council Policy 33, a cash deposit equal to one half the estimated cost of demolition (\$1,750) shall be immediately deposited with the City.

If any of the above conditions are not met, the Office of Central Inspection shall proceed with demolition action and also instruct the City Clerk to have the resolutions published once in the official city paper and advise the owners of these findings.

Agenda Item No. 29.

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1239A

TO: Mayor and City Council

SUBJECT: Funding Support for the Arts

INITIATED BY: Division of Arts and Culture

AGENDA: Unfinished Business

Recommendation: Adopt the revised Resolution for arts funding, and amended Arts Taskforce Recommendations.

Background: In 1994, the City Council and the Arts Council commissioned an independent study of the impact and potential of local arts and culture, which resulted in the approval of the Wichita Community Cultural Plan. One of the goals of the Cultural Plan was to establish a funding mechanism that would encourage cultural resources to become active partners.

On March 16, 2004, the City Council approved the formation of an Arts Task Force. The Arts Task Force was asked to accomplish the following and return with their recommendations:

- Study current funding support for the arts;
- Determine an equitable process for the City Council to evaluate requests for funding;
- Develop public and private funding options and;
- Designate the appropriate department for which the Division of Arts and Culture should reside.

At the December 14, 2004, City Council meeting, a Resolution for arts funding and Arts Task Force Recommendations were presented to the City Council. The Task Force proposed that the City adopt a resolution allocating .77 mills to fund the arts (.76 mills if Sister Cities is excluded). The Council discussed increasing this mill levy allocation to 1 mill and utilizing a tiered system for both established and emerging arts organizations.

The Council also discussed the structure of the review committee charged with making funding recommendations to the City Council during the City's annual budgeting process. Some Council members thought that the number of individuals on the review committee should be increased from 7 individuals to 11 individuals to provide each member with a representative.

The presentation to the Council noted that organizations currently receiving funding would continue to receive funds at the current level; however, they will be subject to the same application/evaluation process as all other organizations seeking funding. Those organizations include: Wichita Art Museum, Botanica, Cowtown, Wichita Arts Council, Mid-America All-Indian Center, the Kansas African American Museum, and the Wichita-Sedgwick County Historical Museum.

Analysis: The Task Force has developed what they believe to be a fair and equitable process that will protect the City's current \$75 million investment in the arts while encouraging the development of other existing and emerging organizations. The Task Force believes that they City must protect its current investments in the organizations that have become an integral part of the community's culture. This investment includes the City's ownership of various properties and entities within the community including the Wichita Art Museum, Old Cowtown, Botanica, and many others. Through historical agreements, the City has made substantial investments in these facilities to purchase, promote and maintain them.

The Task Force believes that the current levels of funding and in-kind support continue to protect the \$75 million investment the City of Wichita has made to the arts. It is imperative that the City continues to promote and encourage growth of the arts as a vehicle for cultural tourism rather than make further reductions to the arts or simply maintain the status quo. A resolution establishing a funding formula needs to be approved/adopted for the arts and cultural community.

Financial Considerations: The process for performance-based criteria developed by the Arts Task Force creates an equitable and fiscally responsible method for distributing funds to arts organizations. A funding formula has been established that would dedicate a portion of the mill levy to allocate funding to support arts and cultural organizations and their facilities. The initial proposal to the Council was for .77 mills, which included Sister Cities and would otherwise be .76 mills equivalent to \$1,909,350, and there was a suggestion this be increased to 1 mill. This increase would result in an additional \$630,364 directed to the arts.

Legal Considerations: Law Department has prepared and approved the form of the proposed policy resolution.

Recommendations/Actions: It is recommended that the City Council approve/adopt the Resolution and Art Taskforce Recommendations.

Agenda Item No. 30

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1248A.

TO: Mayor and City Council

SUBJECT: Amendments to Salary and Position Classification Ordinance

INITIATED BY: Personnel Office

AGENDA: Unfinished Business

Recommendation: Approve the amendments to the ordinance

Background: Agreements have been reached for 2004, 2005 and 2006 with the Fraternal Order of Police, Lodge #5; the International Association of Fire Fighters, Local #135; and the Service Employees International Union, Local #513. The wage rates and other economic terms and conditions of employment already agreed-upon and approved by the City Council are incorporated into this amendment. Beginning on page 12, Section 10 (Pay Rates) shows in bold the changes from these negotiations. These rates and changes go into effect with the pay period beginning December 18, 2004.

The agreement negotiated with the Teamsters Local #795 (Airport) is on the Council Agenda today. The rates in this agreement are also reflected in this amendment.

Also incorporated are the recommendations regarding pay rates and other items for nonexempt employees who are not represented by a bargaining unit, and exempt and management employees. The exempt and management groups have not received a General Pay Adjustment (GPA) for the last two years.

Throughout the year the Personnel Division is requested to review various classifications to determine if they are meeting the needs of the City and departments, and are appropriately classified. Maintaining internal equity in the classification system is also a major consideration and the reason for some reclassifications. There are also some job description revisions that result in minor ordinance changes, but that are necessary to ensure that job descriptions are accurate. For this ordinance there are also many other title changes recommended to be more consistent in how job levels are titled and to eliminate the “director” title for any but department directors. This effort inspired a number of other “clean-up” title revisions, such as deleting any that are no longer in use.

Analysis:

Classification and title changes: The proposed amendments to job descriptions, titles and reclassifications are itemized below.

Titles deleted:

- Assistant City Engineer – not in use
- Community Relations Liaison – not in use
- Computer Machine Operator I and II – not in use
- Director of Airport Administration – not in use
- Fleet and Buildings Director – not in use
- Information Systems Coordinator (A) & (B) – consolidated into Information Systems Coordinator
- Judge Pro-tempore – covered in separate ordinance provision
- Marketing Coordinator – not in use
- Neighborhood and Community Services Director – not in use
- Neighborhood Services Director – not in use
- Parking Control Checker – not in use
- Planning and Administration Director – not in use
- Planning and Development Engineer – not in use
- Recreation Director – not in use
- Watson Park Assistant Manager – not in use

New position titles – These result from creating new positions in the budget, classification studies, job description revisions, deleting unused titles and/or revising titles.

Proposed Title	Current Title	Comment
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Advance Plans Manager division	Land Use Supervisor	Match org. chart and reflect director level
Airport Engineering & Director Planning Manager	Director of Airport Engineering & Planning	Change from
Airport Public Safety Chief	Chief, Airport Public Safety	Revise title
Air Service Development Coordinator	Air Service Development Director	Change from Director
Arts & Cultural Services Manager	Arts & Cultural Services Director	Change from Director
Assistant Golf Professional appropriate new title	Recreation Supervisor I	Reclassification to
Associate Human Resources Human Resources Specialist	Associate Personnel Technician	Revise for change to
Bacteriologist	Bacteriologist I & II	Delete I & II titles
Botanica Manager	Botanica Director	Change from Director
Building Equipment Supervisor	Equipment Supervisor Buildings	Revise title
Building Services Manager	Building Services Director	Change from Director
Career Development Manager	Career Development Director	Change from Director
Century II Manager	Century II Director	Change from Director
Chief Probation Officer common court title	Municipal Court Supervisor	Revise to more
Counselor	Counselor I & II	Delete I & II titles
Current Plans Manager division director level	Current Plans Supervisor	Revise to reflect
Deputy Airport Public Safety Chief	Deputy Chief, Airport Public Safety	Revise title
Deputy City Clerk	Administrative Assistant	Reclassification to new title
Director of Human Resources Human Resources	Personnel Director	Revise for change to
Economic Development revise to Administrator function	Financial Projects Director	Change from Director, and better describe
Environmental Services director level Manager	Environmental Services Supervisor	Revise to reflect division
Environmental Specialist one title		Reclassification of more than position to appropriate new
Fleet Maintenance Services Manager	Fleet Maintenance Services Director	Change from Director

Geologist appropriate new title	Associate Planner	Reclassification to
Golf Course Food & Beverage Reclassification to appropriate new title	Recreation Supervisor I	
Manager		
Golf Professional I appropriate new title	Recreation Supervisor II	Reclassification to

Proposed Title	Current Title	Comment
Golf Professional II appropriate new title	Golf Professional	Reclassification to
Change from Director	Government Relations Officer	Government Relations Director
Historic Museum Manager	Historic Museum Director	Change from Director
Human Resources Specialist	Personnel Technician	Revise for change to Human Resources
Laboratory Administrator	Laboratory Director	Change from Director
Library Services Administrator	Library Services Coordinator	Revise to better reflect level of positions
Marketing Services Coordinator	Marketing Services Director	Change from Director
Municipal Court Clerk	Municipal Court Supervisor	Revise to more common court title
Museum Operations Supervisor	Security Officer	Reclassification from nonexempt range
		623 to exempt range 119 for expanded
Natural Resources Coordinator	Resources Director	supervisory duties
Director, and to better		Change from
Property Management	Property Management Director	describe function
Director		Change from
Administrator		
Senior Storekeeper	Storekeeper (Senior)	Revise inexplicable title
Sewer Maintenance	Superintendent of Sewer	Revise to be consistent with
other Water		
Superintendent	Maintenance	& Sewer division directors
Technical Services Coordinator	Technical Director	Change from Director
Transportation Planning	Transportation Supervisor	Revise to reflect division
director level		
Manager		
Utility Customer Service	Manager, Water Customer	Revise to more up-to-date
title		
Manager	Service	

Utility Services Coordinator
Water Quality Program
describe function

Supervisor

Technician

New position
Environmental Services
Revise to better

Reclassifications – Management has approved these actions but they are included in this amendment because they involve changing existing titles to different pay ranges. Reclassifications are based on the duties of the positions having changed or expanded over time or because of specific reorganizations. It is important that positions be classified consistent with the appropriate level for the duties performed.

Air Quality Program Supervisor – upgrade from exempt range 116 to 114

Chief Information Officer – upgrade from management range 005 to 004 – new department director

Environmental Quality Specialist – upgrade from exempt range 118 to 117

Public Health Sanitarian I – upgrade from nonexempt range 623 to 625

Public Health Sanitarian II – upgrade from exempt range 117 to 116

Public Information Officer – upgrade from exempt range 116 to 113, and change title

Traffic Maintenance Supervisor – upgrade from exempt range 117 to 115

Pay raise recommendations for nonexempt, non-represented employees: It is recommended that a

3% General Pay Adjustment (GPA) be granted for 2005 and 2006 to match that agreed upon for the SEIU. It has long been the practice to match these groups because many are the same job titles doing similar work. It would be unreasonable to have, for example, a Secretary in one department who is represented by SEIU being paid at a different level than a Secretary in another department who is not represented.

An unusual situation exists regarding Police Lieutenants (not represented). They received a 2% GPA for 2004. Since then, 3% GPAs have been approved for represented police personnel, retroactive for 2004. This 1% difference aggravates the already existing pay compression between Lieutenants and Sergeants, plus past practice has been to provide Lieutenants with the same raise as granted to represented personnel. Therefore, a 1% increase is recommended for Police Lieutenants, retroactive for 2004, to address salary compression issues.

Pay raise recommendations for Management and Exempt employees: It is recommended that a 3% GPA be granted. It is also recommended that the maximums of these ranges be increased by 5.5%, with the minimums staying the same. Allowing Education Pay for Police Captains is recommended to recognize and compensate them for their education the same as nonexempt police personnel. This revises the last sentence in Section 10, Pay Rates, p. 13 (7): “This provision will not apply to positions in the Management Pay Plan.”

Longevity Pay: Extending the same Longevity Pay package in the SEIU agreement to all non-represented positions is also recommended. This is shown in Section 10, Pay Rates, p. 14, (14).

Financial Considerations: The pay rates reflect negotiated 3% raises for represented employees, plus other negotiated salary items. Council has previously approved these measures.

The recommended raises and other items for nonexempt, non-represented employees, and Management and Exempt employees, have an estimated cost to the General Fund of \$609,990 in 2005 and \$1,139,610 for 2006, for a total of \$1,749,600 for both years. Staff will work with the City Manager and City Council to provide funding options for the Revised 2005 and 2006 budgets.

The title and job description amendments are either no-cost corrections and changes, or are included in the Revised 2004 or Adopted 2005 budgets.

Legal Considerations: The Department of Law has reviewed the amended ordinance and approved as to form.

Recommendations/Actions: It is recommended that the City Council approve the amendments to the Salary and Position Classification Ordinance, including the recommended economic enhancements.

Agenda Item # 31

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1278

TO: Mayor and City Council

SUBJECT: Request for Letter of Intent for Industrial Revenue Bonds (American Baptist Estates) (District IV)

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Approve the Letter of Intent.

Background: American Baptist Estates is requesting City Council approval of a six-month Letter of Intent for the issuance of Industrial Revenue Bonds in an amount of \$1,325,000. The proceeds of the proposed bond will be used to build five additional duplex buildings and provide funds to continue to remodel and up-date existing units, located at 1605 May Street in southwest Wichita.

Analysis: American Baptist Estates d/b/a Prairie Homestead is a Kansas not-for-profit corporation formed in 1963 to provide a continuing care retirement community for older adults. The original development of Prairie Homestead was developed in 1966. Prairie Homestead provides housing accommodations and care for older adults especially designed to meet their physical, social and spiritual need. The project offers 168 apartments and accommodates single or double occupancy. The units range from 279 to 1072 square feet. Prairie Homestead provides health care services that includes nursing services through scheduled clinics, 24 hour nursing care, and a multitude of therapies. Prairie Homestead also provides dining services, weekly basic housekeeping, security and safety features, numerous in-house social activities, and scheduled transportation.

The proposed expansion will include five additional duplex buildings and provide funds to continue to remodel and up-date existing units.

An estimated analysis of the sources and uses of project funds is:

SOURCES OF FUNDS

2004 Bond Issue	\$1,325,000	
Funds from Tenant		\$ 29,000
Total Sources of Funds	\$1,354,000	

USES OF FUNDS

Construction Costs	\$1,300,000	
Underwriting Fee (2%)	25,000	
Bond Counsel Fee	12,000	
Underwriter's Counsel Fee	9,000	
Tenant's Counsel Fee	1,500	
Printing & Publications	2,000	
Misc.	2,500	
Trustee Fees		2,000

Total Uses of Funds \$1,354,000

The firm of Hinkle Elkouri Law Firm, L.L.C., will serve as bond counsel in the transaction. Riedl First Securities Company of Kansas has agreed to underwrite the bonds. American Baptist agrees to comply with the Standard Conditions contained in the City's IRB Policy.

Financial Considerations: American Baptist agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds. American Baptist does not request a property tax abatement in conjunction with the IRBs. Sales tax exemption on purchase of bond-financed property will save American Baptist an estimated \$53,000, including \$8,500 in county sales tax.

Legal Considerations: Bond documents needed for the issuance of the bonds will be prepared by bond counsel. The City's Attorney's Office will review and approve the form of bond documents prior to the issuance of any bonds. American Baptist Estates is eligible under the new Economic Development incentive policy since they provide affordable housing for senior residents.

Recommendations/Actions: It is recommended that the City Council approve the Letter on Intent to American Baptist Estates for Industrial Revenue Bonds in an amount of \$1,325,000, subject to the Standard Letter of Intent Conditions, for a term of six-months, and authorize the application for a sales tax exemption on bond-financed purchases.

Agenda Item

#32

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1279

TO: Mayor and City Council

SUBJECT: Approval of Economic Development Incentive for Honeywell
(District IV)

INITIATED BY: Finance Department

AGENDA: New Business

Recommendations: Approve the incentive.

Background: Honeywell is a large national conglomerate manufacturer whose aircraft avionics division has its largest instrument repair facility in Wichita, on South Hydraulic near Pawnee, where they employ 179 people at average wages over \$40,000 per year. Over a year ago, Honeywell approached the City regarding incentives and assistance in relocating their operations to a site near Mid-Continent Airport. The move would allow the retention of jobs that would otherwise be lost in a plant consolidation to another city. Honeywell proposed to build a 57,000 SF building on the site, a building substantially larger than their current location to allow room for future growth in employment.

During the process, the City asked Honeywell to consider leasing a site on Mid-Continent Airport adjacent to the main post office facility on Harry Street. Lease terms were negotiated with Airport staff, starting at \$.01 per SF and increasing by \$.01 each year for the 30-year term of the lease, plus two 10-year options with ground lease rent escalators and fair market rent for the building after the initial 30-year term. The Wichita Airport Authority approved the Honeywell site lease on October 19, 2004.

The Greater Wichita Economic Development Coalition (GWEDC) has been working with Honeywell to ensure that the company stays in Wichita. GWEDC has coordinated the development of an incentives package with City, County and State officials, which are presented herewith for approval of the City's portion.

Analysis: The State of Kansas has made the following written incentive offer:

- \$130,000 Kansas Industrial Retraining (KIR) training grant
- Kansas High Performance Incentive Program (HPIP) income tax credits and Enterprise Zone sales tax exemption.
- \$100,000 KEIEP Forgivable Loan.

GWEDC has asked the City and County to each offer forgivable loans based on \$400 per retained job, or \$71,600 each. Honeywell would be required to maintain employment of at least 179 employees for a five-year period in order for the loan to be forgiven. Honeywell plans to finance the construction and equipping of their new Wichita facility entirely with corporate funding. Real property located at Mid-Continent Airport that is used for aviation related purposes is permanently exempt from ad valorem taxes.

Financial Considerations: The City's forgivable loan proceeds will be paid to Honeywell from funds in the 2004 appropriated general fund reserve.

Legal Considerations: Prior to the disbursement of any forgivable loan proceeds, additional City Council action will be required to approve a specific forgivable loan agreement.

Recommendation/Actions: It is recommended that the City Council approve the proposed economic development incentive package for Honeywell, subject to approval of a forgivable loan agreements.

Agenda Item #33

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1280

TO: Mayor and City Council

SUBJECT: Approval of WaterWalk Ground Lease and Related Agreements
(District I)

INITIATED BY: Finance Department

AGENDA: New Business

Recommendations: Approve the Ground Lease and related agreements.

Background: On September 21, 2004, the City Council took several actions to approve and provide a share of the funding for the development of an 88,000 SF anchor destination retail building to be leased by WaterWalk LLC to Gander Mountain, a Minnesota-based outdoor sports retailer. On October 12, 2004, the City Council approved a number of amendments to the WaterWalk Development Agreement needed to proceed with the development of the Gander Mountain project. On November 16, 2004, the City Council directed staff to publish a notice in the Wichita Eagle to inform the public that on December 21, 2004, the Council will consider entering into a ground lease agreement with WaterWalk LLC for the site designated in the WaterWalk Master Plan for the destination retail store. The giving of notice is required by state law governing the disposition of land acquired by municipalities under urban renewal authority. The notice, which was published twice on consecutive weeks, informed the public that the Council would consider any alternative proposals received prior to December 21, 2004.

WaterWalk LLC has negotiated lease terms with Gander Mountain and is prepared to begin construction of the Gander Mountain project once the ground lease is executed. In addition to the ground lease, the Gander Mountain lease requires certain related documents be approved by the City Council, including: parking agreements; a permit for the use of highway right-of-way; a declaration of covenants, conditions and restrictions; and an attornment agreement.

Analysis:

Ground Lease: The attached Ground Lease No. 1 between the City of Wichita and WaterWalk LLC provides for the lease of approximately 2.5 acres of land located on the east bank of the Arkansas River, north of Kellogg, west of Wichita Street and south of

Lewis Street. The ground lease agreement is based on the form contained in the approved WaterWalk Development Agreement. The term of the ground lease is 99 years at the base rental rate of \$1.00 per year. The ground lease also provides for additional rent equal to 25% of any adjusted net cash flow resulting from the tenant's use of the leased premises. The tenant is required to pay taxes on the leased property, plus any difference between actual taxes and the guaranteed amounts of taxes set forth in the Development Agreement. The City agrees to subordinate its leasehold interest in the property to mortgagees making leasehold mortgage loans to the tenant. The City will retain fee simple ownership of the property.

Parking Agreement: The attached Parking Agreement between the City and WaterWalk LLC provides for the development and management of parking facilities in the WaterWalk development area, as well as a basis for generating parking revenues while ensuring that all public parking spaces will be available to the public free of charge. The Development Agreement calls for the City and WaterWalk to enter into such an agreement and provides guidelines for its terms. The City is obligated to pay for the development of parking facilities, up to the amount of \$8,610,000 (as set forth in the amended Development Agreement). Costs in excess of that amount will be paid by WaterWalk, unless there are savings from other public improvements. The top floor of parking in the parking structure located within WaterWalk Place, the first mixed-use building to be built, will be reserved for exclusive use by residential tenants in the building, who will pay parking fees.

The Parking Agreement includes a "GM Parking District Agreement" as Exhibit B which sets forth the parking lease rates, terms and conditions which pertain to the Gander Mountain store and the adjacent retail pad sites. In the future, additional parking district agreements will be presented for City approval as additional areas are ready for development. The GM Parking District Agreement sets monthly parking rates at \$10 per leased space for the first three years and \$15 per space thereafter. Building tenants, such as Gander Mountain, are required to pay parking fees directly to the City. Parking fees not covered by the parking district agreements will be paid by WaterWalk LLC.

Use of Highway Right of Way: The U.S Highway 54 right of way boundary in the vicinity of the WaterWalk project area follows an irregular alignment that encroaches in certain places onto land where improvements are planned. In addition, a significant amount of surface parking will be located underneath the Kellogg Flyover. City staff have worked closely with the staff of the Kansas Department of Transportation to develop the attached Highway Permit – Use of Right of Way, which provides authorization for the improvement of land within the right of way. Since U.S. Highway 54 is a "connecting link" highway, the right of way technically belongs to the City of Wichita. Therefore, both the City is the granting authority for the Permit, and KDOT will co-sign.

Covenants, Conditions and Restrictions: The attached Declaration of Covenants, Conditions and Restrictions ("CCR") is a document that regulates the relationship between WaterWalk LLC, as landlord, and Gander Mountain and other lessees, as

tenants. The City is required to be a party to the document simply because the City is the land owner. The CCR provides for the establishment of an Owners' Association and for the payment of assessments by the members. Assessments are based on annual common area operating budgets that are approved by the Association. The City is not a member of the Association, but will participate as observer. The City cannot be assessed by the Association for any purpose. Assessment revenue will be used to pay for the operation, replacement, improvement and maintenance of common areas, including parking facilities that are the responsibility of the City to maintain. The CCR grants easements over common areas and includes use restrictions and architectural/landscaping provisions.

Attornment: Gander Mountain wishes to ensure that its lease of the destination retailer building will survive in the event WaterWalk LLC loses its leasehold interest in the land for whatever reason. The attached Attornment Agreement provides that the Gander Mountain lease will not be terminated by reason of the foreclosure of the ground lease.

Financial Considerations: There are no new financial obligations of the City created by the agreements presented herewith for approval. The obligation to collect parking fees from commercial tenants in the WaterWalk development is a new requirement for which there will be a marginal administrative cost.

Legal Considerations: The attached agreements have been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the Ground Lease No. 1, the Parking Agreement, the GM Parking District Agreement, the Highway Permit for Use of Right of Way, the Declaration of Covenants, Conditions and Restrictions, and the Attornment Agreement, and authorize the Mayor to sign.

Agenda Item #34

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1281

TO: Mayor and City Council

SUBJECT: Approval of Economic Development Incentives for Franchise
Services Company (District II)

INITIATED BY: Finance Department

AGENDA: New Business

Recommendations: Approve the incentives.

Background: Franchise Services Company, Inc. ("FSC") is a national back-office support services business based in Wichita. The company was founded by former Pizza Hut Corporation employees to provide accounting and back-office services to Pizza Hut franchises following Pizza Hut's move to Dallas. FSC has since greatly expanded its client base to include many other restaurant chains and other businesses. In 2003, FSC was acquired by Savista, a holding company based in Chicago. Savista's only other holding is a Brazilian company that provides point-of-sale technology to restaurant chains and other businesses.

FSC's corporate headquarters is located in the Brittany Square office park, where 280 employees, mostly accountants, are housed. Average wages are \$20.00 per hour. FSC has out-grown its space in Brittany Square and plans to add another 625 employees as it continues to grow its business during the next five years. FSC would like to relocate its corporate headquarters to space it would lease in the former Thorn Americas building at 37th Street North and Rock Road. (Much of the space most previously occupied by the Coleman Company's corporate offices, which have recently moved back to Coleman's main plant on North Hydraulic.) FSC plans to spend \$16,000,000 to remodel, furnish and equip the new headquarters.

The Greater Wichita Economic Development Coalition (GWEDC) has been working with FSC to ensure that the expansion and relocation of the company's corporate headquarters stays in Wichita. GWEDC has coordinated the development of an incentives package with City, County and State officials, which are presented herewith for approval of the City's portion.

Analysis: The State of Kansas has made the following written incentive offer:

- \$1,000,000 IMPACT training grant, of which \$850,000 is SKILL to be used for actual training expenses, and \$150,000 is MPI which can be used at their discretion. (The State requires a 10% administrative fee charged against this program so actual dollars will be reduced by \$100,000.)
- Enterprise Zone income tax credits and sales tax exemption.
- \$450,000 KEIEP Forgivable Loan.

GWEDC has asked the City and County to match 50% of the State's forgivable loan, or \$225,000. In addition, the City is asked to offer industrial revenue bonds to finance the purchase of personal property for the new headquarters and grant a 5-year, 100% property tax abatement and sales tax exemption.

The City is unable to offer an IRB tax abatement on the real property because it will be leased space in a building already owned by a third party, so there can be no IRB financing on the building. To compensate for this, the City and County have been asked to offer a property tax refund for five years, based on the amount of taxes on the Thorn Americas building that is attributable to space leased by FSC. School district taxes would not be rebated.

Financial Considerations: The proposed City forgivable loan would be in the amount of \$112,500. The City's forgivable loan proceeds will be paid to FSC from funds in the 2004 appropriated general fund reserve. The City's share of the annual amount of property tax rebate is expected to be around \$10,000. Rebate payments will be paid with funds budgeted for incentives in the Economic Development Fund, subject to annual appropriations.

Legal Considerations: Prior to the disbursement of any incentives, additional City Council action will be required to approve specific agreements pertaining to the forgivable loan and to the rebate of the City property taxes. In addition, if industrial revenue bonds are actually sought by the Company, the City Council must subsequently hold a public hearing after proper giving of notice, and approve a letter of intent.

Recommendation/Actions: It is recommended that the City Council approve the proposed economic development incentive package for Franchise Services Company, Inc., subject to approval of specific written agreements.

Agenda Item No. 35

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1282

TO: Mayor and City Council
SUBJECT: Banner Upgrade

INITIATED BY: Water & Sewer Department
IT/IS Department

AGENDA: New Business

Recommendation: Approve Indus as the sole source, approve the transfer of funds and authorize the necessary signatures.

Background: Banner is the Customer Information System (CIS) utilized by the Water & Sewer Department to store customer meter readings, generate bills and accept payments. The current system has been in place since September of 2000, with the most recent upgrade being done in April of 2002.

Analysis: To insure that the CIS system used by the Water & Sewer Department will remain sustainable in the long-term and to acquire new functionality, it is necessary to move support to Indus.

Indus is the sole source for this functionality without changing entirely to a new CIS package, which would cost considerably more. Functions to be gained by moving support to Indus include:

- Intelligent Dispatch and Scheduling software
- Business Intelligence
- Data Warehousing functionality
- Customer Contact tracking
- Employee Metrics
- Enhanced-Base Banner functionality

The IT/IS Advisory Board has approved Staff's recommendation.

Financial Considerations: The cost of the Contract with Indus will not exceed \$288,000 including additional required licenses, the license upgrade and Service Suite Licenses for fifty users, and will be funded from the 2004 Water Utility contingency funds. The cost for the Banner upgrade will not exceed \$312,000 and will be included in the 2006 Water & Sewer operating budget. The combined total to be paid from the Water & Sewer operating budget is \$600,000.

The annual maintenance fee from 01/01/2005 – 06/01/2006 will cost \$116,000 and will be paid by IT/IS.

Legal Considerations: The Contract will be reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council: 1) approve the selection of Indus as the sole source; 2) approve the transfer of funds; and 3) authorize the necessary signatures.

Agenda Item No. 36

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1283

TO: Mayor and City Council Members

SUBJECT: Franchise Ordinance Agreement with Kin Networks, Inc. D/B/A ALLTEL Communications (Districts I and VI).

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Adopt the contract franchise.

Background: By Ordinance No. 43-504, passed and approved June 17, 1997, the City of Wichita granted to KIN Network, Inc., the right and privilege to construct, operate, and maintain a fiber optic telecommunication system in the City.

Analysis: KIN Network, Inc., d/b/a ALLTEL Communications, has exercised its option to renew the rights granted under the ordinance for an additional five (5) year term. ALLTELL Communications also seeks minor amendments to its route within the City. The City Engineer has reviewed and approved the changes to the route. All terms of the original agreement remain in full force and effect.

Financial Considerations: Under the existing agreement the City receives an annual payment for this commercial use of the public right-of-way of \$2.50 per foot per year or \$18,747.50 for the 7,499-foot route. Under the adjustment, there is no net impact in the length of the route and the annual payments will remain the same. ALLTEL Communications has made all payments under the existing agreement in a timely manner.

Legal Considerations: This contract franchise is consistent with the requirements and limitations of the 2002 Telecommunications Providers Act. This contract franchise has been reviewed and approved as to form by the City Attorney.

Recommendations/Actions: It is recommended that the City Council approve first reading of the contract franchise ordinance between the City and KIN Network, Inc., d/b/a ALLTEL Communications.

Agenda Item No. 37

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1284

TO: Mayor and City Council Members

SUBJECT: Agreement for Professional Services for Permit Modification for Brooks Landfill - Construction and Demolition Facility (District VI).

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the agreement.

Background: The City owned Brooks Landfill operates today as a disposal site for construction & demolition (C&D) waste. It includes a recycling center for white goods (major appliances) and a small yard waste composting area. The permit modification that established the C&D operations (following closure as a municipal solid waste landfill) identified two phased areas for placement of the C&D waste and included the detailed engineering for the Phase I area. This area is expected to reach its capacity in late 2005 or early 2006 and now needs to be expanded. We also need to expand the yard waste composting area from 0.5 acres to 5 acres.

Analysis: A permit modification will be required to provide for the detailed design and operation for the Phase II C&D waste fill area. The City issued a request for proposal (RFP) on August 20, 2004, to firms capable of preparing the permit application. Six proposals were received. The Staff Screening and Selection Committee (SSSC) met on October 5, 2004 and selected the following four companies to interview: Bucher, Willis & Ratliff Corporation, SCS Engineers, Terracon and Burns & McDonnell. Interviews were conducted by the SSSC on October 21, 2004. Following the interviews and discussion, the SSSC recommended Burns & McDonnell for the assignment. A proposed agreement for this work has been negotiated and is attached.

Financial Considerations: Burns & Mc Donnell will provide the base services in the RFP for a not-to exceed amount of \$36,506.00. Four Supplemental Tasks were also identified in the RFP in the event any of these services are also needed. The total not-to-exceed amount for this agreement, is therefore \$44,383.00. The C&D Landfill operating budget has funds budgeted and available for this work.

Legal Considerations: The agreement has been reviewed and approved as to form by the City Attorney.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the Mayor to sign.

Schedule of Hourly Professional Service Billing Rates

Position Classification	Classification level	Hourly Billing Rate
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General Office*	5	\$46.50
Technician*	6	\$49.00
Assistant*	7	\$ 55.00
	8	\$76.00
	9	\$83.00
Staff*	10	\$91.50
	11	\$100.00
Senior	12	\$108.50
	13	\$119.00
Associate	14	\$ 133.00
	15	\$138.00
Principal	16	\$ 148.00
	17	\$151.00

Notes

2. The hourly rates shown above are effective for services through December 31, 2004, and are subject to revision thereafter.
3. For any nonexempt personnel in positions marked with an asterisk (*), overtime will be billed at 1.5 times the hourly labor billing rates shown.
4. Project time spent by corporate officers will be billed at the Principal rate (Level 17) plus 25 percent.
5. For outside expenses incurred by Burns & McDonnell, such as authorized travel and subsistence, and for services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 10%.
6. A technology charge of \$8.50 per labor hour will be billed for normal computer usage, computer aided drafting (CAD), telephone, fax, photocopy and mail services. Specialty items are not included in the technology charge.
7. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt.

WICHITA904.DOC

NOTICE...NOTICE...NOTICE

NON-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

AFFIRMATIVE ACTION PROGRAM REQUIREMENTS

1. It is the policy of the City of Wichita to require that all contracts of the City and its agencies include provisions to ensure that applicants for employment with its contractors, subcontractors, vendors and suppliers are selected and employees are treated during employment, without regard to race, color, sex, religion, national origin, ancestry, disability, or age except where age is a bona fide occupational qualification.
2. The Kansas Act Against Discrimination (Kansas Statutes Annotated 44-1001 et. Seq., as amended) requires every person who enters into a contract with the City of

Wichita for construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies or services to:

- a. Observe the provisions of the Kansas Act Against Discrimination and not to discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, or age unrelated to such person's ability to engage in the particular work.
 - b. In all solicitations or advertisement for employees, the contractor shall include the phrase "EQUAL OPPORTUNITY EMPLOYER" OR A SIMILAR PHRASE TO BE APPROVED BY THE Kansas Human Rights Commission.
 - c. Upon request, inform the Kansas Human Rights Commission and/or the City of Wichita Finance Department in writing the manner in which such person will recruit and screen personnel to be used in performing the contract.
 - d. Contractor shall include the provisions of Paragraphs (a), (b), (c), and (d) of this Paragraph 2, in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
 - e. EXEMPTED from these requirements are:
 - (1) Any contractor who has already complied with the provisions set forth in these sections by reason of holding a contract with the federal government or a contract involving federal funds. (Proof of compliance is required).
 - (2) Contracts entered into by any contractor who employs fewer than four (4) employees during the term of such contract.
 - (3) Contractors who hold contracts with the City of Wichita with a cumulative total value of five thousand dollars (\$5,000.00) or less during the City fiscal year.
 - f. Reports requested by the Kansas Human Rights Commission shall be made on forms prepared by the Commission, copies of which are available from the Kansas Human Rights Commission, Contract Auditor, 900 S.W. Jackson Street, Suite 851 S., Topeka, Kansas 66612.
3. During the performance of any City contract or agreement, the contractor, subcontractor, vendor or supplier of the City shall comply with all the provisions of the Civil Rights Act of 1964, as amended; The Equal Employment Act of 1972, Executive Orders 11246, 11375, 11141, Part 60 Title 41 of the code of Federal Regulations; the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973, The Americans with Disabilities Act and/or any law, regulation or amendments as may be promulgated thereunder.
4. Failure of any contractor, subcontractor, vendor or supplier to report to the Kansas Human Rights Commission as required by K.S.A. 1976 Supp. 44-1031 as amended or State statutes, Federal statutes or regulations pertaining to discrimination, which finding or decision or order has become final, shall be a breach of contract and any such contract may be canceled, terminated or suspended in whole or in part by the City or its contracting agency.

5. Compliance with the Equal Employment Opportunity requirements of the City of Wichita does not relieve the contractor, subcontractor, vendor or supplier of the necessity of also complying with the Kansas Act Against Discrimination.

Exemptions Claimed: Four (4) Employees or less; Federal Contract, Contract less than \$5,000.00.

NOTE: You will be contacted if you are the successful vendor and do not have a current EEO/AA submittal on file with the Purchasing Office and/or have not REGISTERED VIA THE CITY'S WEB SITE: <http://www.wichitagov.org/ep>. Questions about the City of Wichita's EEO/AA submittal requirements should be directed to (316) 268-4508.

Agenda Item #

38

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1285

TO: Mayor and City Council

SUBJECT: Organizational Improvement Project

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Approve establishment of the proposed project and necessary budget transfer.

Background: The City Manager desires to develop a project which will accelerate the City of Wichita into a high performing organization using continuous quality improvement processes. This initiative is similar to improvements that have been done in the six development departments (Central Inspection, Water/Sewer, Planning, Public Works/Engineering, Environmental Health, Fire) over the past eight years. Desirable characteristics and goals for the organization include the following. The organization 1) is clear about its mission and values, 2) defines outcomes and focuses on results, 3) empowers employees and holds them accountable for the development and implementation of innovative solutions, 4) adopts new processes to motivate and inspire people to succeed, 5) is flexible, adaptable and quick to adjust when conditions change, 6) restructures work processes to meet customer needs, 7) promotes and rewards

improvement and the achievement of results and 8) maintains open and productive communications among stakeholders.

Recently the City's Labor Management Committee has appointed staff sub-committees on policies/processes and values/high performance that will serve as task teams to assist with the improvements.

Analysis: The City plans to contract for consultant services to provide expertise, technical assistance, coaching, facilitation, project management and training to move the organization toward becoming a high performing organization. Selection of the consultant will be on the basis of demonstrated competence, qualifications and compatibility. Requests for Qualifications have been received and consultant selection is tentatively scheduled for early 2005.

It is anticipated that consultant services will be retained for a maximum two-year period with options to renew the contract under the same term and conditions for three successive one-year periods by mutual agreement of both parties. The contract will be subject to cancellation by the City at its discretion at any time within the original contract term or within any successive renewal upon thirty days written notice to the consultant.

Financial Considerations: City staff has identified a total of \$150,000 in funding in the 2004 budget. The sources are \$70,000 from Employee Training and Development, \$60,000 from Research and Development and \$20,000 from Community Relations. An additional future funding source for this initiative may be the Wichita State University mill levy. In the event that a vendor is identified, funds will be available from the project to match any grants or supplement funding that maybe set aside for the initiative in the future.

Legal Considerations: Budget adjustments exceeding \$10,000 require City Council approval.

Recommendation/Actions: It is recommended that the City Council approve the establishment of the Organizational Improvement Project, authorize the issuance of a Request for Proposal and approve the budget adjustments to fund the project.

Agenda Item No. 39

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1286

TO: Mayor and City Council Members

SUBJECT: DR 2003-021 Adoption of 21st Street North Corridor Revitalization Plan
(Districts I, VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

Recommendation: Approve first reading of the Ordinance adopting the 21st Street North Corridor Revitalization Plan.

Background: In February 2004, City Council approved the hiring of a consultant to undertake the development of the 21st Street North Corridor Revitalization Plan. The purpose of this plan is to develop a future land use revitalization concept and strategic action implementation plan for targeted segments of the 21st Street corridor located between Hillside and Amidon, including the north central industrial corridor. The Plan is also to provide solutions to long-standing rail and vehicular transportation issues associated with this area. The planning area generally encompasses a one-block area to the north and south of 21st Street North, as well as portions of the north central industrial corridor from 17th Street North to 33rd Street North, between I-135 and Broadway.

A 13-member steering committee representing area and city stakeholders was appointed by City Council to oversee the development of this plan. Since the planning area was so large and contained three distinct sub-areas, three advisory committees (15 members each) representing these sub-areas were also appointed by Council to provide focused feedback on the development of the plan. A total of four public meetings were held between April and September 2004 to present information, obtain feedback and reach consensus on the plan. A series of three advisory committee meetings and over 12 steering committee meetings were held to help develop a plan that truly reflects the consensus of the community. A city technical advisory committee was also formed to provide technical review and advice throughout the planning process. In addition, the Advance Plans Committee of the Metropolitan Area Planning Commission provided ongoing input into the development of this Plan.

Presentations of the proposed draft plan were made to District Advisory Board I on November 1st and also to District Advisory Board VI on November 17th and December 6th. The Plan has received full endorsement from both of these Boards. On December 9, 2004, following a public hearing, the Metropolitan Area Planning Commission passed a resolution adopting the 21st Street North Corridor Revitalization Plan as an amendment to the Wichita-Sedgwick County Comprehensive Plan.

Analysis: The following is a summary of the major highlights of the 21st Street North Corridor Revitalization Plan:

- q The Plan has been developed based upon the following six guiding principles:
 1. The revitalization of 21st Street is important to all of Wichita.
 2. The community leads the revitalization. The City supports the community in this effort.
 3. Revitalization builds on the ethnic and cultural diversity of the area. It fosters local entrepreneurship.
 4. Solving traffic and parking problems is essential.
 5. Making the area attractive and creating a unique identity are important.
 6. Cleaning up the environment is crucial.

q The Plan contains a vision statement and four goals that reflect the six guiding principles. The Plan also contains an implementation action plan / matrix with specific economic, transportation, environmental and land use actions to be accomplished in a timeframe consisting of the following five phases:

Phase I, Immediate through 2005 Actions

Phase II, 2006-2010 Actions

Phase III, 2011-2015 Actions

Phase IV, 2016-2025 Actions

Phase V, 2025 and Beyond

q Key Phase I Actions: Create the necessary elements of an International Marketplace south of 21st Street and west of Broadway, including intersection improvements and gateway enhancements at 21st Street and Broadway. Create the organizational capacity to drive revitalization efforts.

q Key Phase II Actions: Design and construct a 21st Street Overpass located east of Topeka and west of Cleveland. Complete road system improvements in the central sub-area including improvements to 25th Street east of Broadway, re-striping Ohio and installing at-grade rail crossing improvements. Promote the redevelopment of the El Paso-Derby refinery site, and establish the East End Multicultural District along with associated streetscape improvements east of I-135.

q Key Phase III Actions: Design and construct 21st Street improvements west of Broadway. Design and construct regional gateway features at the interchanges of I-135 / 21st Street and I-135 / 29th Street.

q Key Phase IV Actions: Secure funding sources, acquire necessary ROW and commence relocation of the BNSF mainlines and yards.

q Key Phase V Actions: Complete the relocation of the BNSF mainlines and yards.

Alternatives: Two options are available to Council now that the Metropolitan Area Planning Commission has adopted the 21st Street North Corridor Revitalization Plan as an amendment to the Wichita-Sedgwick County Comprehensive Plan:

- a) Approve first reading of the Ordinance adopting the 21st Street North Corridor Revitalization Plan as an amendment to the Wichita-Sedgwick County Comprehensive Plan.
- b) Other actions deemed appropriate by Council.

Financial Considerations: While the act of Plan adoption involves no funding commitment on the part of the City, the Plan does propose a number of physical improvements throughout the plan area over a 25-year period that would be eligible for funding through GO, CDGB or federal transportation funding sources. These improvements would have to be programmed into the City's CIP in the context of citywide physical improvement projects and priorities.

Legal Considerations: The Metropolitan Area Planning Commission, in accordance with Kansas state statutes, held a public hearing for the proposed 21st Street North Corridor Revitalization Plan on December 9, 2004, with the required notice of public hearing published in the official City and County newspapers. The MAPC approved a resolution adopting the Plan as an amendment to the Wichita-Sedgwick County Comprehensive Plan by a unanimous vote. The adopting Ordinance has been reviewed and approved as to form by the Law Department.

Recommendations / Actions: Adopt the 21st Street North Corridor Revitalization Plan as an amendment to the Wichita-Sedgwick County Comprehensive Plan and approve first reading of the Ordinance.

Agenda Item No. 40

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1287

TO: Mayor and City Council Members

SUBJECT: Northeast Area Plan Update (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

Recommendation: Direct staff to update the 1995 Northeast Area Plan and authorize the District I Council Member to appoint a steering committee to guide the plan update.

Background: In November 1995, following extensive community involvement and technical analysis, the City completed the Northeast Area Plan. This plan addressed numerous community redevelopment and revitalization issues for several low-moderate income neighborhoods located in northeast Wichita. The Plan contained over 90

recommended strategies to implement positive long-term change in northeast Wichita. Nine of these strategies were targeted for specific priority action steps and implementation.

Recently, stakeholders in northeast Wichita have expressed an interest in revisiting the community redevelopment and revitalization strategies identified in the 1995 Northeast Area Plan. Their desire is to update the plan strategies as needed in order to achieve long-term redevelopment and revitalization successes in northeast Wichita.

Analysis: It is important that any update of the Northeast Area Plan reflect input from key community and neighborhood stakeholders. A series of community meetings will be held as part of this initiative. It is recommended that the plan update be focused on the area generally bounded by Hydraulic / I-135 on the west, Douglas / Central on the south, Edgemoor / Old Manor / Oliver / Hillside on the east, and 21st Street / 29th Street on the north. The steering committee formed to oversee this plan update should consist of one representative from each of the following suggested organizations and associations having an active /significant interest in this area:

- q Northeast Millair Neighborhood Association
- q Matlock Heights Neighborhood Association
- q Northeast Heights Neighborhood Association
- q POWER Neighborhood Association
- q North Central Neighborhood Association
- q Fairmount Neighborhood Association
- q Ken-Mar Neighborhood Association
- q Wichita State University
- q POWER CDC
- q Wichita Ministerial League
- q 21st Century Coalition for Neighborhood Revitalization
- q Northeast Chapter, Sunflower Coalition
- q Council member (District I)
- q Metropolitan Area Planning Commission

Financial Considerations: There are no additional financial costs to the City associated with this update. MAPD staff will undertake all necessary work.

Legal Considerations: There are no legal issues associated with this initiative.

Recommendations / Actions: It is recommended that Council direct staff to update the 1995 Northeast Area Plan and authorize the District I Council Member to appoint a steering committee to guide the plan update.

Agenda Item No. 41

December 21, 2004

Agenda Report No. 04-1288

TO: Mayor and City Council

SUBJECT: VAC2004-00060 Request to vacate a portion of platted street right-of-way, platted easement and platted setbacks, generally located midway between 159th Street East and 143rd Street East, north of 13th Street North, more specifically northeast of the Freedom Road – Freedom Road Court intersection, all on Freedom Road Court

(City of Wichita three-mile ring subdivision jurisdiction – Sedgwick County)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve. (Unanimously)

Background: The applicants are requesting consideration for the vacation of a portion of the platted 20-foot utility easement, the platted 30-foot setbacks and the 75-foot radius of the Freedom Road Court cul-de-sac right-of-way (ROW), per the legal description. The Savanna at Castle Rock Ranch 7th Addition was recorded with the Register of Deeds on November 8, 1994.

Analysis: All the lots (all owned by the applicants) located on Freedom Road Court are involved in some portion of the vacation request. The applicants propose the vacations to allow more area to build single-family residences on the lots. The Savanna at Castle Rock Ranch 7th Addition's streets were platted per the Wichita – Sedgwick County Subdivision Regulation for residential suburban standards, but Freedom Road Court has been developed as if it was a city local residential street. City local residential streets require less ROW than residential suburban streets. There are storm water, gas, sewer and water lines in Freedom Road Court ROW, including the 75-foot radius (city local residential streets would typically have a 50-foot radius ROW) of the cul-de-sac.

The MAPC voted to approve (13-0) the vacation request for approval. No one spoke in opposition to this request at the MAPC's advertised public hearing and its Subdivision Committee meeting. No written protests have been filed.

Because this vacation cases is located in Sedgwick County but within the City of Wichita's 3 mile-ring subdivision jurisdiction, consideration and final action by both the

Wichita City Council and the Sedgwick County Board of County Commissioners is required

Financial Considerations: None

Legal Considerations: A certified copy of the Vacation Order and dedications, by separate instrument, of additional easement will be recorded with the Register of Deeds. Retain the south 10-feet of the platted 20-foot utility easement located parallel to the front lot line of Lot 7 and a portion of the front lot line of Lot 6, all in Block 1, the Savanna at Castle Rock Ranch 7th Addition. Vacate the platted 30-foot setback on lots 1 – 7, all in Block 1, the Savanna at Castle Rock Ranch 7th Addition and replace with the Unified Zoning Code's "SF-20" zoning districts front and street side setbacks. . Vacate the platted 75-foot radius of the Freedom Road Court cul-de-sac and replace it with a 50-foot radius.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

Agenda Item # 42

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1289

TO: Mayor and City Council Members

SUBJECT: SUB 2004-95 -- Plat of Cheryl's Hollow Addition, Located on the North Side of 13th Street North and West of 135th Street West. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (12-0)

Background: This unplatted site, consisting of 239 lots on 79.73 acres, has recently been annexed into Wichita's city limits and is zoned SF-5, Single-family Residential District.

Analysis: Petitions, all 100 percent, and a Certificate of Petitions have been submitted for paving, sewer, water and drainage improvements. Arterial Street Improvements will be handled by the County. A Petition and a Certificate of Petition have been submitted. Restrictive Covenants have been submitted to: 1) allow for the creation of a lot owner's association to provide for the ownership and maintenance of the proposed reserves; and 2) provide four off-street parking spaces per dwelling unit on each lot that abuts a 58-foot street. A Temporary Cul-de-sac Easement has also been submitted.

This plat has been reviewed and approved by the Planning Commission, subject to conditions and recording within 30 days.

Legal Considerations: The Certificate of Petitions, Restrictive Covenants and Temporary Cul-de-sac Easement will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures and adopt the Resolutions.

Agenda Item #43

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1290

TO: Mayor and City Council Members

SUBJECT: Street Improvement Agreement for Lot Split No. SUB 2004-100 (Lot 1, Thrifty Second Addition), Located South of Kellogg and Dugan, East of Ridge Road. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the Agreement.

Background: This Agreement is for the paving of Irving Street.

Analysis: The Lot Split will allow for the creation of an additional lot zoned GC, General Commercial District. The Agreement assures the City of Wichita that this property will be included in the paving improvements and that the Lessee have waived his right to protest said paving improvement.

Legal Considerations: The Agreement will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Agenda Item

#44

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1291

TO: Mayor and City Council

SUBJECT: CON2004-37 (Associated with ZON2004-57) – Zone change from “SF-5” Single-family Residential to “LC” Limited Commercial and a Conditional Use for a Night Club within 200 feet of residential zoning. Generally located west of Broadway and north of 47th Street South. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (consent)

MAPC Recommendation: Approve, subject to site plan and staff recommendations.
(8-3)

D.A.B. Recommendation: Approve, subject to site plan and staff recommendations.
(9-0)

Staff Recommendation: Approve zone change, deny conditional use within 200 feet of residential zoning.

BACKGROUND: The applicant requests “LC” Limited Commercial zoning on an approximately 25-foot by 292-foot area currently zoned “SF-5” Single-family Residential. The zone change is necessary for parking on this parcel supporting the owner’s commercial uses. The applicant also requests a Conditional Use for a nightclub in an existing building, currently housing a restaurant. Nightclubs are a permitted use in the LC district, but require a conditional use when within 200 feet of residential zoning. The application area is currently permitted for a restaurant/drinking establishment (DE-R, requiring that greater than 50% of sales come from food); the site is not permitted for an outright tavern or drinking establishment. The applicant’s site plan indicates that the nightclub conditional use property is 53 feet from developed single-family residential property. The proposed nightclub building is approximately 150 feet from single-family residences.

The 1.45-acre site is located on the west side of South Broadway, approximately 1,090 feet north of 47th Street South. The character of the surrounding area is that of general commercial uses along the Broadway Avenue corridor and single-family residential uses to the west of that corridor. A total of four single-family residences abut the parcel owned by the applicant. A portion of the application area is in the FEMA designated 100-year flood plain; a self-storage facility on this site caused increased drainage problems with the residential neighbors west of the site.

The applicant submitted the attached site plan illustrating the proposed use of the subject property as nightclub. The applicant has designated which portion of the building will continue to be used as a restaurant, and which portion will become a nightclub. The entire application area will accommodate parking for both the restaurant and proposed nightclub.

Residential neighbors north and west of the application area have contacted MAPD in opposition to the requested conditional use for nightclub. The residents cite problems with the existing conditional use for self-storage, and concerns about late night noise from the parking lot and proposed nightclub near their residences.

Analysis: MAPC heard this request on November 18th 2004, no members of the public spoke against the request. The MAPC voted 8-3 to approve both the zone change and the conditional use request. DAB IV heard this request on December 1st 2004. No members of the public spoke against the request, the DAB voted 9-0 to approve.

Financial Considerations: None

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Concur with the findings of the MAPC and approve the Zone Change to “LC” Limited Commercial and the Conditional Use to permit a nightclub, subject to the

recommended conditions; approve the first reading of the ordinance establishing the Zone Change and the first reading of the resolution establishing the Conditional Use; or

2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a 2/3-majority vote of the membership of the governing body on the first consideration.)

Agenda Item No. 45a

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1260A

TO: Wichita Airport Authority

SUBJECT: Air Service Consulting Services – The Boyd Group/ASRC, Inc.

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (Unfinished Business)

Recommendation: Approve the Agreement.

Background: On October 21, 2003, the Wichita Airport Authority authorized staff to advertise, select and enter into contract negotiations with various air service consultants to provide air service strategies and consulting services. On January 6, 2004, a selection committee reviewed proposals and conducted interviews to solicit firms to provide air service support functions at Mid-Continent Airport. The Boyd Group was one of the firms selected to do air service consulting.

Analysis: On February 3, 2004, the Wichita Airport Authority authorized an agreement with the Boyd Group to assess Mid-Continent Airport air service levels, identify air service shortfalls, and prioritize air service expansion opportunities. The budget allocated was \$34,225, plus expenses not to exceed 10% of professional services. These projects have been completed. Airport leadership now desires an on-call relationship with the Boyd Group to support opportunity development as needed.

Financial Considerations: Budget for on-call professional services not to exceed \$30,000 with scopes to be identified as appropriate. Project expenses for these services not to

exceed 10% of the cost of professional services. The allocation is available in the Airport budget with an adjustment.

Legal Considerations: The Agreement has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement and the budget adjustment, and authorize the necessary signatures.

Agenda Item No. 45b

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1261A

TO: Wichita Airport Authority

SUBJECT: Air Service Consulting Services – Sabre Consulting

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (Unfinished Business)

Recommendation: Approve the Agreement.

Background: On October 21, 2003, the Wichita Airport Authority authorized staff to advertise, select and enter into contract negotiations with various air service consultants to provide air service strategies and consulting services. On January 6, 2004, a selection committee reviewed proposals and conducted interviews to solicit firms to provide air service support functions at Mid-Continent Airport. Sabre Consulting was one of the firms selected to do air service consulting.

Analysis: Sabre Consulting possesses a current and comprehensive database of passenger reservation information and employs top airline planning talent to provide interpretations and recommendations related to it. This is a unique combination that affords the company sole provider status. The information is used to assess and define the air service potential of a market place and substantiate air service enhancement opportunities. The Wichita Airport Authority last commissioned a study of the Wichita Mid-Continent Airport market by Sabre Consulting in April 2001. That information provided the basis for air service development efforts that came to be known as Fair

Fare\$. These efforts recruited targeted, low-fare airlines to serve Wichita Mid-Continent Airport, brought fares to levels competitive with Tulsa, Oklahoma City, Kansas City, and Omaha, and resulted in service expansions by nearly every airline partner serving the community. The industry and the Mid-Continent Airport market changes rapidly. An updated market study by Sabre Consulting is needed to define and support continued air service development efforts going forward.

Financial Considerations: The cost for the study is \$50,000, with project expenses not to exceed 10% of the cost of professional services. Funds are available in the Airport operating budget.

Legal Considerations: The Agreement has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement, and authorize the necessary signatures.

Agenda Item No. 46a

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1292

TO: Wichita Airport Authority

SUBJECT: Agreement – Gearbuck Aviation Services

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Agreement.

Background: The multi-tenant cargo building on Mid-Continent Airport consists of 31,500 sq.ft. and includes space for 15 different tenants. The leases are for a three-year period terminating June 30, 2005. Rent for use of space in this building is \$6.50 per sq.ft. per year.

Analysis: Gearbuck Aviation Services is an aircraft maintenance, cleaning and polishing company. They provide services to more than 23 airports across the U. S., with aircraft maintenance comprising 85% of their business. They have established a business relationship with existing cargo carriers on Wichita Mid-Continent Airport and are desirous of establishing a physical presence on the airport, while continuing to market and expand their customer base in Wichita. They are interested in leasing 1,200 sq.ft. of space in the cargo building, commencing December 22, 2004.

Financial Considerations: Revenue to the airport will be \$650 per month, or \$7,800 per year.

Legal Considerations: The Agreement has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the agreement and authorize the necessary signatures.

Agenda Item No. 46b

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1293

TO: Wichita Airport Authority

SUBJECT: Agreement – S & S Limousine

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Agreement.

Background: The WAA has received a request from S & S Limousine to provide limousine service to and from Wichita Mid-Continent Airport.

Analysis: The limousine service would be an enhancement to the existing ground transportation services provided to the users of Mid-Continent Airport.

Financial Considerations: While the revenue to the WAA for the provision of this service is not significant (\$50 per month), it does provide additional alternatives for travelers using Wichita Mid-Continent Airport.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement; and authorize the necessary signatures.

Agenda Item No. 46c

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1294

TO: Wichita Airport Authority

SUBJECT: Airline Use Agreements – Supplemental Agreements

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (consent)

Recommendation: Approve the Supplemental Agreements.

Background: The Wichita Airport Authority has a uniform lease and use agreement with the passenger carrying airlines serving Wichita Mid-Continent Airport. The term of the current agreement expires December 31, 2004.

Analysis: It is the normal practice of the Wichita Airport Authority to enter into contractual agreements with the passenger carrying airlines serving Wichita Mid-Continent Airport in order to establish a business relationship and a basis for rentals, fees, and charges. It is now necessary to renew that agreement, effective January 1, 2005. It is recommended that the agreement be renewed for two years through December 31, 2006.

Financial Considerations: The passenger carrying airlines serving Wichita Mid-Continent Airport have agreed to pay for approximately one-third of the maintenance, operation, and debt service associated with the airfield, and for approximately one-half of the cost for operation, maintenance and debt service for the terminal building. The

ensuing rates and charges are determined pursuant to DOT Policy, Federal Code, U. S. Supreme Court rulings, and negotiations. The estimated annual revenue for the coming year is approximately \$4 Million.

Legal Considerations: The Law Department has approved the Supplemental Agreements as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Supplemental Agreements; and authorize the necessary signatures.

Agenda Item No. 46d

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1295

TO: Wichita Airport Authority

SUBJECT: Supplemental Agreement No. 4 – Cessna Aircraft Company

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (consent)

Recommendations: Approve the supplemental agreement.

Background: The Wichita Airport Authority has a number of agreements with Cessna Aircraft Company for use of land on Wichita Mid-Continent Airport. One of these agreements involves the use of 14.36 acres of land on which the Aircraft Completion Center is situated. The original term of this agreement is for the period October 1, 1979 through September 30, 2004. The agreement includes one 25-year option to renew the agreement through September 30, 2029.

Analysis: Both parties are desirous of extending this agreement. The current agreement states that rental for this land area may be adjusted; however, the adjusted rental fee may not be increased or decreased more than 50% from the fee for the previous 25-year period.

Financial Considerations: Land rent for this area is currently \$18,769.80 per year. It is recommended that the 50% increase be imposed for the 25-year extension, for an annual amount of \$28,154.70, which equates to \$.045 per sq. ft.

Legal Considerations: The supplemental agreement has been approved as to form by the Law Department

Recommendation/Actions: It is recommended that the Wichita Airport Authority approve Supplemental Agreement No. 4, and authorize the necessary signatures.

Agenda Item No. 46e

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1296

TO: Wichita Airport Authority

SUBJECT: Agreement for Access – Learjet Remediation Project

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (consent)

Recommendation: Approve the Agreement.

Background: Learjet, Inc., owns facilities adjacent to Mid-Continent Airport. In 1994, the Airport Authority granted Learjet temporary access to the Airport to install monitoring wells to conduct an environmental study of groundwater contamination that had migrated onto the Airport. In 1999, Learjet was allowed to perform an environmental study on the Airport property and to determine if the groundwater contamination could be captured by a water supply well located in the basement of the Terminal and be appropriately treated. With approval of the proposed remediation system by the Kansas Department of Health and Environment, Learjet now seeks a long-term access agreement for use of a well on Airport property.

Analysis: The Access Agreement to Wichita Mid-Continent Airport Property grants Learjet, Inc., the right to use the Terminal water supply well (or place a new well on the Airport in the event the Terminal well is no longer available) for its system for remediation of groundwater contamination. Learjet is also given access for additional monitoring and sampling and the right to use a groundwater permit for remediation purposes. The City may suspend Learjet's use of the Airport well because of any

development on the Airport, upon 180 days notice. The term of the Agreement is 20 years or the completion of the remediation project, whichever is earlier. Indemnity and insurance requirements are included.

Financial Considerations: The Agreement requires Learjet to pay monthly for water and electricity use plus a fee for maintenance, operation, and administration.

Legal Considerations: The Law Department has assisted in the negotiation of the Agreement. The Agreement is approved as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

Agenda Item No. 47

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1297

TO: Wichita Airport Authority

SUBJECT: Airfield Pavement – Taxiway “M” Construction
Wichita Mid-Continent

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority – (Consent)

Recommendation: Approve the change order.

Background: On April 2, 2002, the Wichita Airport Authority awarded Ritchie Paving a contract in the amount of \$9,170,246 for the Taxiway “M” construction project.

Analysis: A final change order has been prepared to allow for adjustment of quantities and work that occurred during construction.

Financial Considerations: The change order of \$41,906.25 is within the approved budget and will be paid for with an FAA grant and Passenger Facility Charges. Total change orders are less than one-percent of the original contract amount.

Legal Considerations: The change order has been approved by the Law Department and approved by the FAA.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the change order and authorize the necessary signatures.

Agenda Item No. 48

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1298

TO: Wichita Airport Authority

SUBJECT: 2005 Schedule of Fees and Charges and Resolution for Aircraft use of
Wichita Mid-Continent Airport

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority

Recommendation: Adopt the Schedule and the Resolution.

Background: Annually the Wichita Airport Authority (WAA) adopts a Schedule of Fees and Charges and a Resolution to establish certain rates for aviation users of Mid-Continent Airport. The fees are calculated to maintain adequate revenue streams that will cover budgeted operating and capital costs incurred to support the related functions.

Analysis: The landing fee and terminal space rent rate calculations are in accordance with the methodology established in the airline/airport use agreement and its application to the adopted budget. Other aviation use fees are set to reflect market price. Rates are established through resolution for those entities that do not hold agreements with the WAA at a higher rate to reflect the lack of fixed commitment.

Financial Considerations: The rates included in the Schedule of Fees and Charges are expected to produce over \$5 million in revenues in 2005. The rate setting methodology

for nearly 75% of those revenues is determined by lease agreements. Staff is recommending that the rates be held at the currently adopted levels. All of the use rates can be altered at any time should that be necessary to recover costs.
Legal Considerations: Rates have been developed in accordance with Federal rates and charges regulations. The Resolution has been approved as to form by the Department of Law.

Recommendations/Actions: It is recommended that the Wichita Airport Authority adopt the Schedule of Fees and Charges and the Resolution of the Wichita Airport Authority implementing a schedule of fees and charges for scheduled passenger airlines all to be effective January 1, 2005.

SCHEDULES OF FEES AND CHARGES

FOR THE USE OF WICHITA MID-CONTINENT AIRPORT

Schedule 1 - Signatory Scheduled Passenger Air Carriers

Schedule 2 – Non-Signatory Scheduled Passenger Air Carriers

Schedule 3 – Non-Signatory Non-Scheduled Passenger Air Carriers

Schedule 4 - Signatory All-Cargo Carriers

Schedule 5 – Non-Signatory All-Cargo Carriers

Schedule 6 - Non-Signatory Commercial Aircraft Operators

Schedule 7 - Non-Commercial Aircraft Operators and Military

SCHEDULE 1

Signatory Scheduled Passenger Air Carriers

A Signatory Scheduled Passenger Air Carrier is defined as any company, organization or individual engaged in the business of air transportation, and who

1. Is operating under a Certificate pursuant to FAR Part 121, 123, 127, 129, or 135;
2. Has a current Airport Use Agreement with The Wichita Airport Authority;
3. Handles revenue passengers as a major business function on a regularly-scheduled basis to or from Wichita Mid-Continent Airport.

AIRPORT FEES AND CHARGES

Landing fee per 1,000 lbs./MGLW	\$1.90
Terminal Space Rental per square foot per year:	
Ticket Counter	\$41.94
Holdrooms; Concourses; Bag Claim	\$37.75
Offices; VIP/Club Space	\$33.55
Bag Make-Up; Operations Space, Elevators	\$29.36
Inbound Bag; Tug Lane, Stairwells	\$20.97
Passenger Loading Gate Apron Fee	\$14,400/year
Use of Unleased Terminal Gate	\$60.00/flight
Use of Loading Bridge	\$66.00/flight
Aircraft parking on terminal apron other than at an exclusively leased gate or when paying for use of an unleased gate	
(a) 0-24 hours	\$50.00
(b) Over 24 hours	\$3.00/hour
Fuel Farm Fee Agreement	As defined in Use

SCHEDULE 2

Non-Signatory Scheduled Passenger Air Carriers

A Non-Signatory Scheduled Passenger Air Carrier is defined as any company, organization or individual engaged in the business of air transportation, and who

1. Is operating under a Certificate pursuant to FAR Part 121, 123, 127, 129, or 135;
2. Does not have a current Airport Use Agreement with The Wichita Airport Authority;
3. Handles revenue passengers as a major business function on a regularly-scheduled basis to or from Wichita Mid-Continent Airport.

AIRPORT FEES AND CHARGES

Landing fee per 1,000 lbs./MGLW	\$2.38
Terminal Space Rental per square foot per year:	
Ticket Counter	\$46.41
Holdrooms; Concourses; Bag Claim	\$41.77
Offices; VIP/Club Space	\$37.13
Bag Make-Up; Operations Space, Elevators	\$32.49
Inbound Bag; Tug Lane, Stairwells	\$23.20
Apron rate per linear foot per year	\$51.58
Use of Unleased Terminal Gate	\$75.00/flight
Use of Loading Bridge	\$82.50/flight
Aircraft parking on terminal apron other than at an exclusively leased gate or when paying for use of an unleased gate	
(a) 0-24 hours	\$62.50
(b) Over 24 hours	\$3.75/hour
Fuel Farm Fee	As defined.

SCHEDULE 3

Non-Signatory Non-Scheduled Passenger Air Carriers

A Non-Signatory Non-Scheduled Passenger Air Carrier is defined as any company, organization or individual engaged in the business of air transportation, and who

1. Is operating under a Certificate pursuant to FAR Part 121, 123, 127, 129, or 135;
2. Does not have a current Airport Use Agreement with The Wichita Airport Authority;
3. Handles revenue passengers as a major business function to or from Wichita Mid-Continent Airport.

AIRPORT FEES AND CHARGES

Landing fees, per 1,000 lbs./MGLW	\$2.85
Minimum Landing Fee	\$11.00
Terminal Space Rental per square foot per year:	
Ticket Counter	\$46.41
Holdrooms; Concourses; Bag Claim	\$41.77
Offices; VIP/Club Space	\$37.13
Bag Make-Up; Operations Space, Elevators	\$32.49
Inbound Bag; Tug Lane, Stairwells	\$23.20
Apron rate per linear foot per year	\$51.58
Use of Unleased Terminal Gate	\$90.00/flight
Use of Loading Bridge	\$99.00/flight
Aircraft parking on terminal apron other than at an exclusively leased gate or when paying for use of an unleased gate	
(a) 0-24 hours	\$75.00
(b) Over 24 hours	\$4.50/hour
Fuel Flowage Fee	\$0.12/gallon
Law Enforcement Officer screening support when required (One hour minimum)	\$36.00/hour

SCHEDULE 4

Signatory All-Cargo Carriers

A Signatory All-Cargo Carrier is defined as any company, organization or individual engaged in the air transportation business, and who

1. Is operating under a Certificate pursuant to FAR Part 91, 121, 123, 127, 129 or 135;
2. Has a current primary lease with The Wichita Airport Authority or a sublease which has been approved by The Wichita Airport Authority, either leasing facilities or leasing ground, if same are available, and has executed and complied with a Use Agreement as offered by The

Wichita Airport Authority. This includes companies that are engaged in providing feeder service exclusively to one host all-cargo company that has complied with the lease requirements of this schedule.

3. Handles for hire cargo as a major business function to or from Wichita Mid-Continent Airport.

AIRPORT FEES AND CHARGES

Landing Fee, per 1,000 lbs./MGLW	\$1.90
Fuel Flowage Fee	\$0.03/gallon
Freight Charge (Enplaned & Deplaned)	\$0.10/cwt
Cargo Apron Aircraft Parking Charge	
(a) 0-2 hours; 0 - 12,500 lbs.	Free
(b) 2-24 hours; 0 - 12,500 lbs.	\$25.00
(c) 0-24 hours; over 12,500 lbs.	\$50.00
(d) Over 24 hours	\$3.00/hour

SCHEDULE 5

Non-Signatory All-Cargo Carriers

A Non-Signatory All-Cargo Carrier is defined as any company, organization or individual engaged in the air transportation business, and who

1. Is operating under a Certificate pursuant to FAR Part 91, 121, 123, 127, 129 or 135;
2. Does not have a current primary lease with The Wichita Airport Authority or a sublease which has been approved by The Wichita Airport Authority, either leasing facilities or leasing ground, if same are available, and has executed and complied with a Use Agreement as offered by The Wichita Airport Authority.

3. Handles for hire cargo as a major business function to or from Wichita Mid-Continent Airport.

AIRPORT FEES AND CHARGES

Landing Fee, per 1,000 lbs./MGLW	\$2.85
Minimum Landing Fee	\$11.00
Fuel Flowage Fee	\$0.12/gallon
Freight Charge (Enplaned & Deplaned)	\$0.15/cwt
Cargo Apron Aircraft Parking Charge	
(a) 0-2 hours; 0 - 12,500 lbs.	Free
(b) 2-24 hours; 0 - 12,500 lbs.	\$37.50
(c) 0-24 hours; over 12,500 lbs.	\$75.00
(d) Over 24 hours	\$4.50/hour

SCHEDULE 6

Non-Signatory Commercial Aircraft Operators

A Non-Signatory Commercial Aircraft Operator is defined as any company, organization or individual engaged in the air transportation business, and who

1. Is operating under a Certificate pursuant to FAR Part 91, 121, 123, 127, 129 or 135;
2. Does not have a current Airport Use Agreement with The Wichita Airport Authority;
3. Is involved in any commercial (for hire) activity on Wichita Mid-Continent Airport not covered by other schedules.

AIRPORT FEES AND CHARGES

Landing Fee per 1,000 lbs./MGLW	\$2.85
Minimum Landing Fee	\$11.00
Fuel Flowage Fee	\$0.12/gallon
Use of a Terminal Gate	\$90.00/flight
Use of Loading Bridge	\$99.00/flight
Law Enforcement Officer screening support when required (One hour minimum)	\$36.00/hour
Freight Charge (Enplaned and Deplaned)	\$0.15/cwt
Aircraft Parking Charge (other than at leased facilities)	
(a) 0-24 hours;	
0 - 12,500 lbs.	\$37.50
over 12,500 lbs.	\$75.00
(b) Over 24 hours	\$4.50/hr.

SCHEDULE 7

Non-Commercial Aircraft Operators and Military

A Non-Commercial Aircraft Operator is defined as any company, organization or individual engaged in air transportation, and who

1. Is operating under FAR Part 91 and is not involved in any commercial (for hire) activity on Wichita Mid-Continent Airport.
2. Is military or acting on behalf of the military (defined as under the jurisdiction and control of the Armed Forces of the United States or the National Guard).

AIRPORT FEES AND CHARGES

Landing Fee	None
Fuel Flowage Fee	\$0.12/gallon
Use of a Terminal Gate	\$90.00/flight
Use of Loading Bridge	\$99.00/flight
Law Enforcement Officer screening support when required (One hour minimum)	\$36.00/hour
Aircraft Parking (other than at leased facilities)	
(a) 0-24 hours	
0 - 12,500 lbs.	\$37.50
over 12,500 lbs.	\$75.00
(b) Over 24 hours	
	\$4.50/hour

Agenda Item No. 49

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1299

TO: Wichita Airport Authority

SUBJECT: Commercial Lawn Management – Amendments

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (consent)

Recommendation: Approve the amendments.

Background: Commercial Lawn Management d/b/a Evergreen Lawn and Landscape was selected in 2002 and again in 2003 in response to two separate proposals solicited by the City of Wichita Purchasing Division to provide grounds maintenance services in non-secure areas on Wichita Mid-Continent Airport.

Analysis: Both agreements allow for a one-year extension, subject to a renegotiation of fees. Work completed by this company has been satisfactory, and both parties are interested in extending the agreements.

Financial Considerations: The extensions allow for a cost of living increase, and a minor increase in the area to be maintained. The annual cost for providing this service is \$64,590, reflecting an increase of \$6,177.

Legal Considerations: The Amendments have been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve Amendment Nos. One and Two, and authorize the necessary signatures.

Agenda Item No. 50

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1300

TO: Wichita Airport Authority

SUBJECT: Cessna/Yingling Land Leases

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (consent)

Recommendation: Approve the documents.

Background: Cessna Aircraft leases on Mid-Continent Airport certain properties known as Yingling Aircraft for the purposes of operating a fixed base operation serving general aviation aircraft. Cessna subleases those facilities to Yingling Aircraft, Inc. Cessna /Yingling is desirous of building a 15,500 sq.ft. hangar and shop facility on land adjacent to and currently leased by Cessna/Yingling for the purposes of further development of the business of aircraft refurbishment and completion work.

Analysis: In order to accomplish this project, it is necessary to demolish a 50-year old office/shop structure on the north end of the current leasehold and to construct the hangar and shop facility. Further, it is necessary to relocate certain fences and security equipment. All of the above is a project cost to Cessna/Yingling. Costs to the Wichita

Airport Authority are the installation of a new area fire hydrant and the relocation of a storm sewer which traverses the leasehold, at an estimated total cost of \$47,000. The facility will be titled to the Wichita Airport Authority and the leases involved will have a 30-year term.

Financial Considerations: Cessna/Yingling will fund the estimated \$1.5 Million project from the proceeds of an Airport Special Facility Revenue Bond issue to be presented at a later meeting. The Wichita Airport Authority contribution of \$47,000 will be paid from airport revenues and is budgeted within the current CIP. As part of an on-going reconstruction of common-use entrances to the general aviation parking area, the road adjacent to the leasehold will be concurrently reconstructed.

Legal Considerations: The Law Department has approved the documents as to form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the amendment, land use agreement, amendment to sublease, and pledge resolution; and authorize the necessary signatures.

Agenda Item #51

City of Wichita
City Council Meeting
December 21, 2004

Agenda Report No. 04-1301

TO: Mayor and City Council

SUBJECT: Airport Marketing

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority

Recommendation: Approve contract for marketing services

Background: It is the policy of the Wichita Airport Authority to fund marketing and communications programs aimed at stimulating the use of Wichita Mid-Continent Airport. Such programs may be directed from time to time on a temporary basis toward the use of certain air carriers who introduce and sustain new "discount" service. Wichita Mid-Continent Airport has been experiencing new and expanded airline service with the arrival of recent carriers. The Wichita Airport Authority Board has determined that it is in the best public interest to promote these services locally to educate the traveling public. It is critical to the success of Mid-Continent Airport that those in our catchment area be aware of these services and continue to utilize them for the betterment of the Airport.

Prior marketing efforts have contributed to the growth of passengers using Mid-Continent Airport.

Last year, the Airport and Marketing Director worked with the Purchasing Department to put together the formal request for proposal by area businesses interested in this project. After initial review, six (6) agencies were selected to do formal presentations to a selection committee. The selection committee included a representative of the Fair Fare\$ Board, Airport Advisory Board, Airport Staff, Marketing Director and Purchasing Director. The recommendation of that selection committee in November of 2003 was to contract with Sullivan Higdon Sink as the agency of record. A contract was developed for one year, with a one year option for renewal.

Analysis: As the contract has come up for renewal, the Airport and Marketing Directors reviewed options with the Wichita Airport Advisory Board at their recent board meeting. The options for the WAAB were to retain SHS and renew the contract or to take the project out for formal RFP again this year. After review, the WAAB felt that it was in the best financial interest of the Airport to retain SHS.

Financial Considerations: None at this time. Council will be asked to approve a financial amount once the agency and the Airport officials agree on the appropriate amount. There is an allocation available in the Airport budget for 2005.

Legal Considerations: None at this time.

Recommendations/Actions: It is recommended that the City Council approve the WAAB's recommendation to retain the services of Sullivan Higdon Sink for another year.